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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2015–0098]

RIN 0579–AE27

Importation of Fresh Persimmon With Calyxes From Japan Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of fruits and vegetables to allow the importation of fresh persimmon with calyxes from Japan into the United States. As a condition of entry, the persimmon must be produced in accordance with a systems approach that includes requirements for orchard certification, orchard pest control, post-harvest safeguards, fruit culling, traceback, and sampling. The persimmons will also have to be accompanied by a phytosanitary certificate with an additional declaration stating that they were produced under, and meet all the components of, the agreed upon systems approach and were inspected and found to be free of quarantine pests. This action will allow the importation of fresh persimmons with calyxes from Japan while continuing to protect against the introduction of plant pests into the United States.

DATES: Effective October 12, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Senior Regulatory Policy Coordinator, Regulatory Policy and Coordination, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2103.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–78, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

On August 30, 2016, we published in the **Federal Register** (81 FR 59522–59526, Docket No. APHIS–2015–0098) a proposal [1] to amend the regulations to allow the importation of fresh persimmon with calyxes from Japan into the United States under a systems approach that includes requirements for orchard certification, orchard pest control, post-harvest safeguards, fruit culling, traceback, and sampling.

We solicited comments concerning our proposal for 60 days ending October 31, 2016. We received three comments by that date, from members of the public and the Hawaii Department of Agriculture (HDOA). The comments are discussed below.

One commenter requested that we not allow any biological materials into the United States to eliminate the risks associated with exotic plant pests and diseases. Another commenter asked if the demand for persimmon with calyxes was high enough in the United States to justify the risks associated with the importation of the fruit from Japan. The commenter suggested that our resources would be better invested in the domestic production of fresh persimmon fruit.

Under the Plant Protection Act (PPA), APHIS' primary charge with regard to international import trade is to identify and manage the phytosanitary risks associated with importing commodities. When we determine that the risk associated with the importation of a commodity can be successfully mitigated, it is our responsibility to make provisions to import that commodity. For the reasons explained in the RMD and the proposed rule, we have determined that the phytosanitary measures required by this rule are sufficient to mitigate the risks associated with the importation of persimmons from Japan.

The HDOA requested that fresh persimmon with calyxes from Japan be fumigated with an appropriate and effective chemical prior to importation to mitigate the risks associated with several pests like *Pseudococcus cryptus* and *Scirtothrips dorsalis,* which are two pests associated with Japanese persimmon that are found in certain regions of Hawaii. Alternatively, the HDOA requested that the proposal only apply to the continental United States, keeping in place the prohibition on the importation of persimmon with calyxes from Japan into Hawaii.

The PRA rated *P. cryptus* and *S. dorsalis* as having 'High' risk for all of the United States (including Hawaii). The risk mitigation measures considered this and concluded that the systems approach was adequate to address the risk associated with the importation of persimmon with calyxes from Japan and, therefore, fumigation is not a necessary mitigation option. As discussed in the RMD, the pest control used for persimmons in Japan will follow the guidelines jointly agreed to by APHIS and the national plant protection organization (NPPO) of Japan and will include inspections and oversight. These guidelines are mandatory for persimmon producers in Japan who wish to export their persimmons to the United States. As such, we have determined that the systems approach will be effective at mitigating the risk of these quarantine pests following the pathway and being introduced into Hawaii or any other State and that it is not necessary to limit consignments to the continental United States.

The HDOA also noted that persimmons in Hawaii are commercially produced and cultivated as a specialty crop, with the fruit retailing locally for higher than the projected price of persimmons from Japan, which could negatively impact Hawaii's persimmon industry.

The U.S. Department of Agriculture's weekly records on advertised fruit and vegetable retail prices confirm that retail prices of fresh persimmon sold in Hawaii sharply increase every January, generally from below $2 per pound in December to over $5 per pound in January. However, given Japan's premium export prices and limited

[1] To view the proposed rule, pest risk analysis (PRA), risk management document (RMD), and the comments we received, go to *https://www.regulations.gov/docket?D=APHIS-2015-0098.*

export volumes, impacts of the rule on retail prices of fresh persimmon in Hawaii are expected to be minor.

The HDOA expressed concern that proposed § 319.56–76(c)(2) does not explain how persimmons produced in accordance with the regulations would be segregated from persimmons that are not produced in accordance with those requirements. Additionally, the HDOA expressed concern that the sanitation practices of packinghouses that process different lots of persimmons are omitted from the requirements.

The NPPO of Japan and APHIS will develop an operational workplan that details the activities that the packinghouses will carry out to meet the requirements of the systems approach. The operational workplan will include detailed segregation and sanitation protocols to ensure that all consignments intended for importation into the United States are free from quarantine pests and disease.

Therefore, for the reasons discussed in the proposed rule, we are adopting the proposed rule as a final rule without change.

Note: In the proposed rule, the system approach for persimmons with calyxes from Japan was designated as § 319.56–76; however, that section has since been utilized. Therefore, the systems approach will be added as § 319.56–79.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. Further, because this rule is not significant, it does not trigger the requirements of Executive Order 13771.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the *Regulations.gov* Web site (see footnote 1 in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Most U.S. persimmon production takes place in California, where 2013 production totaled about 35,700 metric tons (MT) valued at about $40 million, triple the 2011 level of production. U.S. persimmon imports in 2014 totaled 1,757 MT valued at about $3 million, $2 million of which were imported from Israel and $0.4 million from Spain. The United States is a net exporter of fresh persimmon, with the value of exports totaling about $6 million in 2014.

Japan's persimmon acreage and production have been gradually declining over the last decade. A very small percentage of Japan's persimmon (about 0.2 percent of production) was exported in 2014, totaling about 578 MT and valued at $2.4 million, primarily to Southeast Asia. The average export price of fresh persimmon from Japan was $4.13 per kilogram (KG) in 2014. This price is considerably higher than the average price paid by the United States for fresh persimmon imports, about $1.70 per KG in 2014, and the average farm-gate price for persimmon produced in California, about $1.11 per KG in 2013. The wide price differential between persimmon exported from Japan and persimmon imported or produced by the United States suggests that the competitiveness of persimmon from Japan in the U.S. market will be limited.

Japan's Ministry of Agriculture, Forestry and Fisheries expects 30 to 50 MT of fresh persimmons to be exported to the United States in the first year, and the same or additional amounts in following years. This level of imports, valued at about $124,000 to $207,000 based on the average export price of $4.13 per KG in 2014, would have little economic impact on U.S. entities, large or small, all the more so given their likely high price compared to the average price of persimmons imported from elsewhere.

The Small Business Administration's (SBA) small-entity standard for entities involved in fruit farming is $750,000 or less in annual receipts (NAICS 111339). It is probable that most or all U.S. persimmon producers are small businesses by the SBA standard. We expect any impact of the rule for these entities will be minimal, given Japan's expected small share of the U.S. persimmon market.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows fresh persimmon with calyxes to be imported into the United States from Japan. State and local laws and regulations regarding persimmon with calyxes imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the new requirements included in this final rule, which were filed under 0579–0455, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–79 is added to read as follows:

§ 319.56–79 Persimmons with calyxes from Japan.

Fresh persimmons (*Diospyros kaki* Thunb.) may be imported into the United States only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Adisciso kaki* Yamamoto, a fungus; *Colletotrichum horii* B. Weir & P.R. Johnst, a fungus; *Conogethes puntiferalis* (Guenée), a yellow peach moth; *Crisicoccus matsumotoi* (Siraiwa),

a mealybug; *Cryptosporiopsis kaki* (Hara) Weinlm, a fungus; *Homonopsis illotana* (Kennel), a moth; *Lobesia aeolopa* (Meyrick), a moth; fungi *Mycosphaerella nawae* Hiura & Ikata, *Pestalotia diospyri* Syd. and P. Syd., *Pestalotiopsis acaciae* (Thumen) Yokoyama & Kaneko, *Pestalotiopsis crassiuscula* Steyaert, *Phoma kakivora* Hara, and *Phoma loti* Cooke; *Ponticulothrips diospyrosi* (Haga & Okajima), a thrip; *Pseudococcus cryptus* (Hempel), a mealybug; *Scirtothrips dorsalis* (Hood), a thrip; *Stathmopoda masinissa* (Meyrick), a moth; *Tenuipalpus zhizhilashviliae* (Reck), a mite; and *Thrips coloratus* (Schmutz), a thrip.

(a) *General requirements.* (1) The national plant protection organization (NPPO) of Japan must provide an operational workplan to APHIS that details the activities that the NPPO of Japan will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The operational workplan must include and describe the quarantine pest survey intervals and other specific requirements as set forth in this section.

(2) *Commercial consignments.* Persimmons from Japan may be imported in commercial consignments only.

(b) *Places of production requirements.* (1) All places of production that participate in the export program must be approved by and registered with the Japan NPPO.

(2) The NPPO of Japan must visit and inspect the place of production monthly beginning at blossom drop and continuing until the end of the shipping season for quarantine pests. Appropriate pest controls must be applied in accordance with the operational workplan. If the NPPO of Japan finds that a place of production is not complying with the requirements of this section, no fruit from the place of production will be eligible for export to the United States until APHIS and the NPPO of Japan conduct an investigation and appropriate remedial actions have been implemented.

(3) Harvested fruit must be transported to the packinghouse in containers marked to identify the place of production from which the consignment of fruit originated.

(c) *Packinghouse requirements.* (1) All packinghouses that participate in the export program must be approved by and registered with the Japanese NPPO.

(2) During the time the packinghouse is in use for exporting persimmons to the United States, the packinghouse may only accept persimmons from registered approved production sites and the fruit must be segregated from fruit intended for other markets.

(3) All damaged or diseased fruit must be culled at the packinghouse.

(4) Boxes or other containers in which the fruit is shipped must be marked to identify the place of production where the fruit originated and the packinghouse where it was packed.

(5) The NPPO of Japan must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of the systems approach. If the NPPO of Japan finds that a packinghouse is not complying with the requirements of this section, no fruit from the packinghouse will be eligible for export to the United States until APHIS and the NPPO of Japan conduct an investigation and appropriate remedial actions have been implemented.

(d) *Sampling.* Inspectors from the NPPO of Japan must inspect a biometric sample of the fruit from each consignment at a rate to be determined by APHIS. The inspectors must visually inspect for quarantine pests listed in the operational workplan required by paragraph (a) of this section and must cut fruit to inspect for quarantine pests that are internal feeders. If quarantine pests are detected in this inspection, the consignment will be prohibited from export to the United States.

(e) *Phytosanitary certificate.* Each consignment of persimmons must be accompanied by a phytosanitary certificate of inspection issued by the Japan NPPO with an additional declaration stating that the fruit in the consignment were grown, packed, and inspected and found to be free of pests in accordance with the requirements of 7 CFR 319.56–79.

(Approved by the Office of Management and Budget under control number 0579–0455)

Done in Washington, DC, this 6th day of September 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–19226 Filed 9–11–17; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2015–0050]

RIN 0579–AE21

Importation of Bone-In Ovine Meat From Uruguay

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by allowing, under certain conditions, the importation of bone-in ovine meat from Uruguay. Based on the evidence in a risk assessment that we prepared, we believe that bone-in ovine meat can safely be imported from Uruguay provided certain conditions are met. This final rule will provide for the importation of bone-in ovine meat from Uruguay into the United States, while continuing to protect the United States against the introduction of foot-and-mouth disease.

DATES: Effective October 12, 2017.

FOR FURTHER INFORMATION CONTACT: Dr. Stephanie Kordick, Import Risk Analyst, Regional Evaluation Services, National Import Export Services, VS, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC; (919) 855–7733; *Stephanie.K.Kordick@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of various diseases, including rinderpest, foot-and-mouth disease (FMD), African swine fever, classical swine fever, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations contains criteria for recognition by the Animal and Plant Health Inspection Service (APHIS) of foreign regions as free of rinderpest or free of both rinderpest and FMD. APHIS considers Uruguay to be free of rinderpest. However, APHIS does not consider Uruguay to be free of FMD because Uruguay vaccinates cattle against FMD.

On July 1, 2016, we published in the **Federal Register** (81 FR 43115–43120, Docket No. APHIS–2015–0050) a

proposal [1] to amend the regulations to allow the importation of fresh bone-in ovine meat from Uruguay under certain conditions.

We solicited comments concerning our proposal for 60 days ending August 30, 2016. We received 17 comments by that date. They were from producers, importers, exporters, industry and professional associations, specialty food retailers, and representatives of local and foreign governments. Ten commenters were generally supportive of the proposed rule. Four commenters were opposed to the proposed rule but did not address specific provisions. The remaining commenters raised questions or concerns about the proposed rule and the risk analysis. The comments are discussed below.

Risk Analysis

One commenter stated that previous risk assessments, conducted in 2002 and 2012, are too old and should not be used to support this action. The commenter also stated that the 2014 site visit appears to be an update of the 2012 visit.

The 2014 risk assessment focused on evaluation of factors related to the system of mitigations proposed for the select lambs. While specific conclusions reached in previous evaluations were not necessarily revisited, information collected during the 2014 evaluation substantiated our previous conclusions.

Two commenters stated that before action is taken on this matter, an updated and comprehensive quantitative risk analysis should be conducted and the results made available to the public for review and comment.

Most of APHIS' risk analyses for FMD have been, and continue to be, qualitative in nature. APHIS believes that, when coupled with site visit evaluations, qualitative risk analyses provide the necessary information to assess the risk of the introduction of FMD through importation of commodities such as fresh ovine meat. Quantitative risk analysis models may not be the best tool to use to assess the risk of FMD posed by exports from a country, such as in cases where the types of data required by such models are either unavailable or suffer from a high level of parameter uncertainty. In these instances, APHIS' approach is to characterize the risk of outbreak qualitatively in order to determine what appropriate measures to implement in order to mitigate the risk posed to the United States in the event of an outbreak in the exporting country (*e.g.,* maturation and pH of meat, no diagnosis of FMD in the previous 12 months).

One commenter stated that a transparent review process for the recognition of the animal health status for export countries, to include documented management controls and written reporting of site visits, would provide livestock stakeholders in the United States with the assurance of a rigorous, scientific decisionmaking process for assessing and minimizing animal disease risks associated with the trade of animals and animal products.

The risk analysis document, which was made available at the time the proposed rule was published, includes all relevant information collected during the evaluation process, including during the site visit. APHIS encouraged review and comment on this document, especially if additional scientific information is available that informs the risk determination.

In the past, site visit reports and other relevant documents have either been made available as part of the supporting documentation accompanying the proposed rule or upon request. Going forward, these documents will routinely be made available at the time of publication.

One commenter stated that when a product has increased value—in this case bone-in lamb meat sales to the United States from Uruguay—and there are like products in other zones, regions, or areas of lower value because they cannot export their products, there is an opportunity for transshipment or smuggling. The commenter stated that such risk should be measured and included in a quantitative risk analysis.

APHIS notes that this comment could be understood in different ways. If the commenter is referring to the potential for illegal importation of ovine meat not derived from select lambs from Uruguay, we note that the risk of direct smuggling of ovine meat into the United States is outside the scope of the risk analysis.

If the commenter's concern is that animals or their products could be smuggled into Uruguay and represented as Uruguayan lambs (or ovine meat), we note that all lambs selected for inclusion in the select lamb facility originate from source flocks that have been certified by the national veterinary authority of Uruguay. Each lamb that enters the facility receives an official ear tag by the government authority and once the cohort is complete the flock is closed to new entries. The national veterinary authority of Uruguay is responsible for oversight and audit of the select lamb facility. Traceability is maintained from the source flock to the finished, labeled product at the slaughter plant.

Surveillance and Testing

One commenter stated that more information is needed on the specific procedures used by the Veterinary Laboratories Division of Uruguay (DILAVE). The commenter stated that information should be published on the laboratory quality control procedures, the proper use of positive and negative controls, and other procedures in place to routinely assess the quality and accuracy of the current diagnostic testing procedures used. The commenter also stated that while FMD test kits are validated by laboratories approved by the World Organization for Animal Health (OIE), the labs using the test kits should provide evidence of annual or more frequent blind testing for accuracy by an independent agency.

Information about laboratory procedures and practices at DILAVE were evaluated as part of the 2002 and 2012 evaluations. These procedures were determined to be satisfactory as a result of those evaluations. Updated information was provided as part of the current evaluation; DILAVE has since updated its quality assurance program, hiring a quality manager and achieving International Organization for Standardization (ISO) 9001:2008 certification and ISO/IEC17025–2005 accreditation, which help ensure compliance with laboratory standards. DILAVE continues to use OIE-validated test kits for its FMD testing. Therefore, APHIS maintains confidence in Uruguay's laboratory capacity for the detection of FMD virus.

One commenter expressed concern about the serological surveillance conducted in Uruguay. The commenter stated that the term ''systematic sampling'' is used but not well-defined. The commenter also stated that depending on the type of ''systematic sampling'' used, significant bias could be introduced that would lessen the likelihood of selecting and detecting an FMD infected animal. As an example, the commenter stated that the assumption of a 0.5 percent prevalence among herds means that a sampling scheme could miss testing an infected herd or flock for every 200 herds sampled and that a very large number of herds would have to be sampled to ensure that the population does not include a few infected herds. The commenter noted that APHIS states that since FMD is a highly contagious disease, most animals in a herd would

[1] To view the proposed rule, the supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0050.*

be infected. The commenter stated that this assumption may not be true for sheep raised in a country with a reasonably aggressive vaccination program being practiced in cattle.

Uruguay's national serologic surveillance program for FMD has been addressed in prior evaluations. The active surveillance component of the program has included herd level testing within the bovine and ovine populations, using both systematic and random selection of animals, depending on the study and the year. APHIS determined that the overall sampling scheme was rigorous. Furthermore, under the proposed system of mitigations, additional FMD testing is conducted in 100 percent of lambs upon entry into the select lamb facility followed by herd level testing within the facility prior to slaughter.

Two commenters stated that the claims of sensitivity of the FMD virus antibody test for sheep are not supported by the studies, as cited. The Sharma study [2] cited in the risk analysis did not examine sheep, and therefore, there is no scientific basis in that study to support that the assay would have a 99 percent sensitivity in sheep. The commenters stated that the Brocchi study [3] cited in the risk analysis did examine sheep but reported in the abstract a 99 percent sensitivity only for cattle.

Although the number of sheep tested in the Brocchi study was too small to derive statistical conclusions, because results in sheep mirrored those in cattle, with a detection rate of 100 percent 20 days post-infection, the authors concluded that the findings of the study indicated ''performances [for sheep were] similar to those observed for cattle,'' which was 99 percent overall. In addition, many peer-reviewed articles have demonstrated that the 3ABC non-structural protein (NSP) enzyme-linked immunosorbent assay (ELISA) has adequate diagnostic sensitivity when used in sheep, including both those with clinically apparent and subclinical disease.[4]

One commenter stated that in the executive summary of an audit report carried out by the European Commission (EC) in March 2012 concerning the animal health controls for FMD in Uruguay, three outstanding issues were noted as weakening the system of FMD controls in Uruguay. The first of these was insufficient attention paid to targeting official on-the-spot controls on FMD vaccination and deficient official reporting of those controls. Without appropriate targeting, adequate vaccination coverage in all areas with an increased risk of FMD cannot be ensured.

As we explained in the proposed rule, Uruguay vaccinates cattle against FMD, but does not vaccinate sheep. APHIS evaluated factors related to the proposed system of mitigations for sheep in the 2014 risk assessment. The cattle vaccination program was not re-evaluated at this time; however, in our previous evaluations we determined that the vaccination program for cattle in Uruguay was robust. Additionally, the report cited in this comment determined that the observed deficiencies were compensated by the high level of cooperation observed among farmers, and that annual surveys demonstrated that immunity levels in the national cattle population clearly exceeded the OIE recommended target of 80 percent, demonstrating adequate vaccine coverage.

The commenter noted that the second issue identified in the EC report was a very limited contribution of passive surveillance to the detection and notification of suspect cases of vesicular diseases.

APHIS evaluated the contribution of passive surveillance to the overall national surveillance program in Uruguay in its 2012 evaluation, concluding that the measures were ''effective and rigorous.'' Although national surveillance was not re-evaluated in the October 2015 risk assessment, documents provided by Uruguay support these conclusions, demonstrating the continued legal requirements for notification of suspicious cases of FMD on the part of all livestock owners and workers and an ongoing awareness program. In addition to these requirements for animal owners and handlers, clinical inspection of livestock is conducted by official personnel during routine farm visits, at points of animal concentration such as auctions and at sanitary posts within the country, resulting in inspection of over 1 million head per year. APHIS also notes that passive surveillance within the population of lambs designated for slaughter for export is carried out within the select lamb facility by the two full time employees assigned to the facility, as described in the risk analysis. APHIS believes that surveillance activities carried out in the national livestock population of Uruguay and the select lamb facility are sufficient to detect FMD if present.

The third issue noted by the commenter in the EC report was non-validated sensitivity of the combination of diagnostic tests used to carry out the sero-epidemiological checks conducted since 2007 aimed at proving the absence of virus circulation in cattle and ovine populations. APHIS notes that the EC report addressed Uruguay's use of the ELISA 3A and 3B tests to detect NSP, rather than the 3ABC NSP test, as recommended by the Pan American Foot and Mouth Disease Center. As described in the risk assessment, Uruguay is currently using the 3ABC NSP ELISA, the recommended screening test, in this cohort of lambs. In addition, although APHIS did not re-evaluate the national FMD surveillance program in the current risk assessment, documentation received from Uruguay demonstrate that the recommended protocol was put in place beginning in late 2012, after the conclusion of the report.

One commenter stated that a readily available and up-to-date FMD vaccine bank for the United States with the capacity to meet the demands of a type 3 or greater FMD outbreak should be a priority action for the agency.

We recognize that, depending on the size and scope of an FMD outbreak, the production and distribution of vaccines could prove challenging. While we do have a resource in the North American Foot-and-Mouth Disease Vaccine Bank

[2] Sharma, G.K., J.K. Mohapatra, et al. (2014). ''Comparative evaluation of non-structural protein-antibody detecting ELISAs for foot-and-mouth disease sero-surveillance under intensive vaccination.'' *Journal of Virological Methods* 207: 22–28.

[3] Brocchi, E., I. Bergmann, et al. (2006). ''Comparative evaluation of six ELISAs for the detection of antibodies to the non-structural proteins of foot-and-mouth disease virus.'' *Vaccine* 24(47): 6966–6979.

[4] Armstrong, R.M., Cox, S.J., Aggarwal, N., Mackay, D.J., Davies, P.R., Hamblin, P.A., Dani, P., Barnett, P.V. and Paton, D.J., 2005. ''Detection of antibody to the foot-and-mouth disease virus (FMDV) non-structural polyprotein 3ABC in sheep by ELISA.'' *Journal of Virological Methods,* 125(2): 153–163.

Blanco, E., Romero, L.J., El Harrach, M. and Sánchez-Vizcaíno, J.M., 2002. ''Serological evidence of FMD subclinical infection in sheep population during the 1999 epidemic in Morocco.'' *Veterinary Microbiology,* 85(1): 13–21.

Bruderer, U., Swam, H., Haas, B., Visser, N., Brocchi, E., Grazioli, S., Esterhuysen, J.J., Vosloo, W., Forsyth, M., Aggarwal, N. and Cox, S., 2004. ''Differentiating infection from vaccination in foot-and-mouth-disease: evaluation of an ELISA based on recombinant 3ABC.'' *Veterinary Microbiology,* 101(3): 187–197.

Lu, Z., Cao, Y., Guo, J., Qi, S., Li, D., Zhang, Q., Ma, J., Chang, H., Liu, Z., Liu, X. and Xie, Q., 2007. ''Development and validation of a 3ABC indirect ELISA for differentiation of foot-and-mouth disease virus infected from vaccinated animals.'' *Veterinary Microbiology,* 125(1): 157–169.

Sørensen, K.J., Madsen, K.G., Madsen, E.S., Salt, J.S., Nqindi, J. and Mackay, D.K.J., 1998. ''Differentiation of infection from vaccination in foot-and-mouth disease by the detection of antibodies to the non-structural proteins 3D, 3AB and 3ABC in ELISA using antigens expressed in baculovirus.'' *Archives of Virology,* 143(8): 1461–1476.

(NAFMDVB), which stores many types of inactivated FMD virus antigens, this resource might be overwhelmed in the face of a large and expanding outbreak. APHIS continues to discuss this issue and engage our stakeholders in planning and preparation for any response, including identification of options and potential funding sources for expansion of the bank. In the event that the United States experiences an FMD outbreak in which a specific strain is identified, the United States Department of Agriculture will notify the NAFMDVB, which will request the manufacturing of finished vaccine from approved suppliers, based on the stockpiled antigens.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. Further, because this final rule is not significant, it is not a regulatory action under Executive Order 13771.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the *Regulations.gov* Web site (see footnote 1 in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

With this rule, APHIS will exempt sheep meat imported from Uruguay from the deboning requirement for a select group of lambs subjected to additional risk-mitigating measures. These measures include testing for FMD with negative results, individual animal identification and traceability, and segregation of selected lambs from FMD-susceptible animals following testing.

In 2013, the Food and Agriculture Organization of the United Nations estimated the sheep population in Uruguay to be 7.5 million head, generating income both from the sale of wool and sheep meat. With the exception of dairy farms, most of the livestock farms in Uruguay are mixed, running both beef cattle and sheep. There are approximately 15,000 farms with sheep, but income from sheep is only a minor proportion of total income.

Uruguay has requested the exemption from the deboning requirement specifically to export rack of lamb, which includes the rib bones, to the United States. These cuts are higher quality and command a higher price than lamb meat that has been deboned, as currently required.

Given the additional risk-mitigating measures, Uruguay expects to export bone-in meat from up to 6,000 lambs per year. These lambs will be between 6–8 months of age at the time of slaughter, producing a total carcass weight of lamb meat of about 100 metric tons (MT) per year. While all meat from these lambs will be eligible for import under this rule, the focus will likely be on rack of lamb, which represents about one quarter of this weight, or about 25 MT.

From 2012 through 2015, the United States imported an average of about 43,300 MT of bone-in lamb meat annually, valued at over $427 million. The vast majority of these imports have been from Australia and New Zealand, with small quantities from Canada, Chile, and Iceland. Annual imports of 100 MT of bone-in lamb from Uruguay would be equivalent to less than 3/10 of 1 percent of total annual bone-in lamb imports into the United States.

Given the very small quantity of bone-in lamb meat expected to be imported from Uruguay, this action will not have a significant economic impact on domestic producers or importers, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579–0449, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, NEWCASTLE DISEASE, HIGHLY PATHOGENIC AVIAN INFLUENZA, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 94.29 is amended as follows:

■ a. By revising paragraph (g); and

■ b. By revising the OMB citation at the end of the section.

The revisions read as follows:

§ 94.29 Restrictions on importation of fresh (chilled or frozen) beef and ovine meat from specified regions.

* * * * *

(g) All bone and visually identifiable blood clots and lymphoid tissue have been removed from the meat; except that bone-in ovine meat from Uruguay may be exported to the United States under the following conditions:

(1) The meat must be derived from select lambs that have never been vaccinated for FMD;

(2) The select lambs must be maintained in a program approved by the Administrator. Lambs in the program must:

(i) Be segregated from other FMD-susceptible livestock at a select lamb facility operated under the authority of the national veterinary authority of Uruguay;

(ii) Be subjected to an FMD testing scheme approved by the Administrator; and

(iii) Be individually identified with official unique identification that is part of a national traceability system sufficient to ensure that only the products of select lambs meeting all required criteria are exempt from the deboning requirement.

(3) Select lambs and their products must not be commingled with other animals and their products within the slaughter facility.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0372, 0579–0414, 0579–0428, and 0579–0449)

Done in Washington, DC, this 6th day of September 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–19225 Filed 9–11–17; 8:45 am]

BILLING CODE 3410–34–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4002

Bylaws of the Pension Benefit Guaranty Corporation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its bylaws regulation to conform to changes in the bylaws adopted by the Board of Directors.

DATES: Effective September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Judith R. Starr (*starr.judith@pbgc.gov*), General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; 202–326–4400, ext. 3083; Hilary Duke (*duke.hilary@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, 202–326–4400, extension 3839. (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400, extension 3083 or to 202–326–4400, extension 3839.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Section 4002(b)(3) of ERISA gives PBGC power to adopt, amend, and repeal, by the board of directors, bylaws. Section 4002(f) of ERISA provides that the board of directors may alter, supplement, or repeal any existing bylaw, and may adopt additional bylaws from time to time as may be necessary. PBGC's bylaws are set forth in 29 CFR part 4002.

PBGC's Board of Directors (the Secretaries of Labor, the Treasury, and Commerce) voted to amend the bylaws at a meeting of the Board of Directors on September 7, 2017. This rule replaces the old bylaws with the new bylaws in PBGC's regulations.

Compliance With Rulemaking Guidelines

This is a rule of ''agency organization, procedure, or practice'' and is limited to ''agency organization, management, or personnel matters.'' Accordingly, this rule is exempt from notice and public comment requirements under 5 U.S.C. 553(b) and the requirements of Executive Order 12866 and Executive Order 13771. Because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply to this rule. See 5 U.S.C. 601(2), 603, 604.

PBGC finds good cause exists for making the bylaws set forth in this rule effective less than 30 days after publication because the amendments were adopted by the Board of Directors on September 7, 2017.

List of Subjects in Part 4002

Administrative practice and procedure, Organization and functions (government agencies).

■ Accordingly, 29 CFR part 4002 is revised to read as follows:

PART 4002—BYLAWS OF THE PENSION BENEFIT GUARANTY CORPORATION

Sec.

Authority: 29 U.S.C. 1302(b)(3), 1302(f).

§ 4002.1 Board of Directors, Chair, and Representatives of Board Members.

(a) *Composition and responsibilities of the Board of Directors*—(1) *Board.* Section 4002(d)(1) of ERISA establishes the Board membership as the Secretaries of Labor (Chair), the Treasury, and Commerce. A person who, at the time of a meeting of the Board of Directors, is serving in an acting capacity as, or performing the duties of, a Member of the Board of Directors will serve as a Member of the Board of Directors with the same authority and effect as the designated Secretary.

(2) *Chair of the Board.* As Chair of the Board, the Secretary of Labor will preside over all Board meetings. As a direct report to the Board under section 4002(d)(4) of ERISA, the Inspector General of the Corporation reports to the Board through the Chair. The Participant and Plan Sponsor Advocate also reports to the Board through the Chair.

(3) *Board responsibilities.* Except as provided in paragraph (b) of this section, the Board may not delegate any of the following responsibilities—

(i) Voting on an amendment to these bylaws.

(ii) Approval of the Annual Report, which includes the Annual Management Report (AMR) (and its components the financial statements, management's discussion and analysis, annual performance report and independent auditor's report), the Chair's message, and other documentation in conformance with guidance issued by the Office of Management and Budget (OMB).

(iii) Approval of the Corporation's Investment Policy Statement.

(iv) Approval of all reports or recommendations to the Congress required by Title IV of ERISA.

(v) Approval of any policy matter (other than administrative policies) that would have a significant impact on the pension insurance program.

(vi) Review of reports from the Corporation's Inspector General that the Inspector General deems appropriate to deliver to the Board.

(4) *Investment Policy Statement review.* The Board must review the Corporation's Investment Policy Statement at least every two years and approve the Investment Policy Statement at least every four years.

(b) *Designation of and responsibilities of Board Representatives and Alternate Representatives*—(1) *Board Representatives.* A Board Representative, as designated under section 4002(d)(3) of ERISA, may act for all purposes under these bylaws, except that an action of a Board Representative

on a Board Member's behalf with respect to the powers described in paragraphs (a)(3)(i) through (iii) of this section, will be valid only upon ratification in writing by the Board Member. Any Board Representative may refer for Board action any matter under consideration by the Board Representatives.

(2) *Alternate Representatives.* A Board Member may designate in writing an official, not below the level of Assistant Secretary, to serve as the Board Member's Alternate Representative at a meeting. An Alternate Representative may act for all purposes at that meeting, except that the Alternate Representative's actions will be valid only upon ratification in writing by either the Board Member or the Board Representative. Any action of the Alternate Representative involving the powers described in paragraphs (a)(3)(i) through (iii) of this section or any matter that has been referred to the Board under paragraph (b)(1) of this section must be ratified in writing by the Board Member.

(3) *Ratification.* For purposes of this section, ratification of a Board Representative or Alternative Representative action includes approval of the minutes of the meeting of the Board of Directors by voice vote or otherwise.

(c) *Review and approval of regulations.* Regulations may be issued by the Director of the Corporation, subject to the following conditions—

(1) Regulations must first be reviewed for comment by each Board Representative except for routine updates of PBGC valuation factors and actuarial assumptions.

(2) A Board Representative may, within 21 days of receiving a regulation for review, request that it be referred to the Board Representatives for approval.

(3) Nonsignificant regulations and significant proposed regulations within the meaning of Executive Order 12866 and subject to review under paragraph (c)(1) of this section may be issued by the Director upon either the expiration of the time specified in paragraph (c)(2) of this section, or, if the approval option is exercised, upon Board Representative approval.

(4) Significant final regulations must be approved by the Board Representatives or the Board.

(5) The Director may submit regulations subject to approval by the Board Representatives or the Board to OMB for concurrent review after they have been pending without comment before the Board Representatives or the Board for more than 60 days.

§ 4002.2 Quorum.

Section 4002(d)(2) of ERISA establishes that a majority of the Board Members will constitute a quorum for the transaction of business. Any act of a majority of the Members present at any meeting at which there is a quorum will be the act of the Board.

§ 4002.3 Meetings.

(a) *General.* Meetings of the Board of Directors are called by the Chair in accordance with section 4002(e)(1) of ERISA and on the request of any Board Member. The Chair must provide reasonable notice of any meetings to each Board Member.

(b) *Minutes.* The General Counsel of the Corporation serves as Secretary to the Board of Directors pursuant to section 4002(d)(5) of ERISA. The General Counsel must keep Board minutes. As soon as practicable after each meeting, the General Counsel must distribute a draft of the minutes of such meeting to each Member of the Board for approval. The Board of Directors may approve minutes by resolution or by voice vote at a subsequent meeting. Subject to appropriate redactions authorized by section 4002(e)(2)(C) of ERISA, approved minutes will be posted on PBGC's Web site.

§ 4002.4 Place of meetings; use of conference call communications equipment.

(a) *Place of meetings.* Meetings of the Board of Directors will be held at the principal office of the Corporation or the Department of Labor unless otherwise determined by the Board of Directors or the Chair.

(b) *Teleconference.* Any Member may participate in a meeting of the Board of Directors through the use of conference call telephone or similar communications equipment, by means of which all persons participating in the meeting can speak to and hear each other. Any Board Member so participating in a meeting will be deemed present for all purposes. Actions taken by the Board of Directors at meetings conducted through the use of such equipment, including the votes of each Member, must be recorded in the minutes of the meetings of the Board of Directors.

§ 4002.5 Voting without a meeting.

A resolution of the Board of Directors signed by all of the Board Members or all of the Board Representatives will have the same effect as if agreed to at a meeting and must be kept in the Corporate Minutes Book. A resolution for an action taken on any matter for which a Board Member has been disqualified under § 4002.6 may be signed by the Board Representative of the disqualified Board Member to the extent the matter is delegable under these bylaws.

§ 4002.6 Conflict of interest.

(a) *Board Members and Director.* The Board Members and the Director must work with their respective ethics office to identify actual or potential conflicts of interest under 18 U.S.C. 208 or section 4002(j) of ERISA or the appearance of the loss of impartiality under 5 CFR 2635.502.

(b) *Disqualification.* A Board Member and the Director must notify the Board Members of disqualification in any decision or activity based on a conflict of interest under paragraph (a) of this section. To the extent a matter is delegable under these bylaws, the disqualified Board Member's Board Representative, acting independently of that Member, may vote on the matter in the Member's place. The disqualified Board Member may not ratify any action taken on the matter giving rise to his or her disqualification.

§ 4002.7 Director of the Corporation and senior officers.

(a) *Director of the Corporation.* Section 4002(a) and (c) of ERISA establish that the Corporation is administered by a Director. Subject to policies established by the Board, the Director is responsible for the Corporation's management, including its personnel, organization and budget practices, and for carrying out the Corporation's functions under Title IV of ERISA. The Director will timely provide the Board any information necessary to assist the Board in exercising its statutory responsibilities. The Director must submit the Corporation's budget to the Chair of the Board for review and approval before formally submitting the budget to OMB.

(b) *Senior officers.* The senior officers of the Corporation report directly to the Director. The Director must consult with the Board before eliminating or creating a senior officer position or making an appointment to a senior officer position.

§ 4002.8 Emergency procedures.

(a) An emergency exists if a quorum of the Corporation's Board cannot readily be assembled or act through written contact because of the declaration of a government-wide emergency. These emergency procedures must remain in effect during the emergency and upon the termination of the emergency will cease to be operative unless and until another emergency occurs. The emergency

procedures operate in conjunction with the PBGC Continuity of Operations Plan (''COOP Plan'') of the current year, and any government-wide COOP protocols in effect.

(b) During an emergency, the business of the PBGC must continue to be managed in accordance with its COOP Plan. The functions of the Board of Directors must be carried out by those Members of the Board of Directors in office at the time the emergency arises, or by persons designated by the agencies' COOP plans to act in place of the Board Members, who are available to act during the emergency. If no such persons are available, then the authority of the Board must be transferred to the Board Representatives who are available. If no Board Representatives are available, then the Director of the Corporation must perform essential Board functions.

(c) During an emergency, meetings of the Board may be called by any available Member of the Board. The notice thereof must specify the time and place of the meeting. To the extent possible, notice must be given in accordance with these bylaws. Notice must be given to those Board Members whom it is feasible to reach at the time of the emergency, and notice may be given at a time less than 24 hours before the meeting if deemed necessary by the person giving notice.

§ 4002.9 Seal.

The seal of the Corporation must be in such form as may be approved from time to time by the Board.

§ 4002.10 Authority and amendments.

(a) Section 4002 of ERISA and the bylaws establish the authority and responsibilities of the Board, the Board Representatives, and the Director.

(b) These bylaws may be amended or new bylaws adopted by unanimous vote of the Board.

Issued in Washington, DC.

W. Thomas Reeder,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2017–19308 Filed 9–11–17; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0844]

Drawbridge Operation Regulation; Carquinez Strait, Martinez, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Union Pacific Railroad Drawbridge across the Carquinez Strait, mile 7.0, at Martinez, CA. The deviation is necessary to allow advance notification for openings due to mechanical issues at the bridge and to conduct repairs to resolve said issues. This deviation requires the bridge to open on signal if at least 30 minutes notice is given to the bridge operator from approaching vessels and allows the bridge to remain in the closed-to-navigation during operating equipment replacement.

DATES: This deviation is effective without actual notice from September 12, 2017 through 5 p.m. on September 19, 2017. For the purposes of enforcement, actual notice will be used from September 6, 2017 until September 12, 2017.

ADDRESSES: The docket for this deviation, USCG–2017–0844 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516; email *Carl.T.Hausner@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard has recommended and the Union Pacific Railroad Company has agreed to a temporary change in the operation of the Union Pacific Railroad Drawbridge, over the Carquinez Strait, mile 7.0, at Martinez, CA. The drawbridge navigation span provides a vertical clearance of 70 feet above Mean High Water in the closed-to-navigation position. The draw operates as required by 33 CFR 117.5. Navigation on the waterway is commercial and recreational.

Due to bridge operating equipment issues, the bridge will open on signal if at least 30 minutes notice is given to the bridge operator from 12 p.m. on August 25, 2017 through 10 a.m. on September 19, 2017. The drawspan will be secured in the closed-to-navigation position from 10 a.m. through 5 p.m. on September 19, 2017, to allow the bridge owner to replace the defective equipment. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised. Vessels able to pass through the bridge in the closed position may do so at anytime. From 10 a.m. through 5 p.m. on September 19, 2017, the bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: September 6, 2017.

Carl T. Hausner,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2017–19254 Filed 9–11–17; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2017–13]

Affixation and Position of Copyright Notice

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

ACTION: Final rule.

SUMMARY: This final rule makes a non-substantive technical change to the U.S. Copyright Office's regulations governing the affixation and position of copyright notice on various types of works.

DATES: Effective October 12, 2017.

FOR FURTHER INFORMATION CONTACT: Erik Bertin, Deputy Director of Registration Policy and Practice, by email at *ebertin@loc.gov;* or Andrew P. Moore, Barbara A. Ringer Honors Fellow, by email at *amoo@loc.gov.* Both can be reached by telephone by calling 202–707–8040.

SUPPLEMENTARY INFORMATION: As part of the U.S. Copyright Office's ongoing efforts to streamline its regulations, the Office is consolidating its regulations related to copyright notice.[1] Copyright notice was required for works published prior to January 1, 1978, which were governed by the Copyright Act of 1909. Before the Copyright Act of 1976, if a work was not published with a proper copyright notice, copyright protection for the work was lost in the United States.[2] The 1976 Act also generally required copyright notice (unless a statutory exemption applied) until March 1, 1989, when the Berne Convention Implementation Act of 1988 took effect, making copyright notice optional.[3] If a work was publicly distributed prior to the Berne Convention Implementation Act, the omission of a copyright notice did not invalidate the copyright in a work if the notice was omitted from a relatively small number of copies, registration was made within five years after publication and a reasonable effort was made to add notices to copies distributed to the public after the omission was discovered, or the omission was a result of a violation of an express agreement requiring affixation of notice in order to publicly distribute copies.[4]

While U.S. law no longer requires the use of a copyright notice, placing it on a work does have some legal benefits. For example, the use of notice can inform the public that a work is protected by copyright and provide information on authorship and the date of first publication.[5] Additionally, in an infringement action, a court will not give weight to a defendant's use of an innocent infringement defense, which could otherwise result in a reduction of damages, if the relevant copies of the work in question had a proper copyright notice.[6]

Currently, two sections of the Office's regulations concern copyright notice: One contains provisions governing copyright notice generally, 37 CFR 202.2, and the other specifies methods of affixation and positions of the copyright notice on various types of works, 37 CFR 201.20. Because the information and requirements contained in these two separate sections are more appropriately contained in a single location, the contents of 37 CFR 201.20 are being relocated to 37 CFR 202.2. The current 37 CFR 201.20 is now rendered duplicative and is being removed and reserved. In addition to relocating the contents of 37 CFR 201.20, minor technical changes are being made to its contents including removing superfluous definitions previously contained in 37 CFR 201.20(b)(1) and (2)[7] and relocating the definition of ''machine-readable copy'' § 202.2(c)(2), which is dedicated to definitions.

In addition to the technical changes discussed above regarding copyright notice, this rule is fixing two typos in the 37 CFR 202.6(e)(1), removing an extraneous period and adding a missing comma.

Because this amendment is a non-substantive, technical change not ''alter[ing] the rights or interest of parties,'' it is therefore not subject to the notice and comment requirements of the Administrative Procedure Act,[8] and the Office is publishing this as a final rule without first publishing a notice of proposed rulemaking. Other provisions in the regulations that relate to copyright notice remain unaffected.

List of Subjects in 37 CFR Parts 201 and 202

Copyright.

Final Regulations

For the reasons set forth in the above, the Copyright Office amends 37 CFR parts 201 and 202 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.20 [Removed and Reserved]

■ 2. Remove and reserve § 201.20.

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

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

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

■ 4. In § 202.2, add paragraph (c) to read as follows:

§ 202.2 Copyright notice.

* * * * *

(c) *Methods of affixation and positions of the copyright notice on various types of works*—(1) *General.* (i) This paragraph specifies examples of methods of affixation and positions of the copyright notice on various types of works that will satisfy the notice requirement of section 401(c) of title 17 of the United States Code, as amended by Public Law 94–553. A notice considered ''acceptable'' under this regulation shall be considered to satisfy the requirement of that section that it be ''affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright.'' As provided by that section, the examples specified in this regulation shall not be considered exhaustive of methods of affixation and positions giving reasonable notice of the claim of copyright.

(ii) The provisions of this paragraph are applicable to copies publicly distributed on or after December 1, 1981. This paragraph does not establish any rules concerning the form of the notice or the legal sufficiency of particular notices, except with respect to methods of affixation and positions of notice. The adequacy or legal sufficiency of a copyright notice is determined by the law in effect at the time of first publication of the work.

(2) *Definitions.* For the purposes of this paragraph:

(i) In the case of a work consisting preponderantly of leaves on which the work is printed or otherwise reproduced on both sides, a ''page'' is one side of a leaf; where the preponderance of the leaves are printed on one side only, the terms ''page'' and ''leaf'' mean the same.

(ii) A work is published in *book form* if the copies embodying it consist of multiple leaves bound, fastened, or assembled in a predetermined order, as, for example, a volume, booklet, pamphlet, or multipage folder. For the purpose of this paragraph, a work need not consist of textual matter in order to be considered published in ''book form.''

(iii) A *title page* is a page, or two consecutive pages facing each other, appearing at or near the front of the

[1] Copyright notice placement on phonorecords is governed by statute rather than regulations and can be found at 17 U.S.C. 402(b)–(c). These provisions remain unaffected by this final rule.

[2] Sec. 9, Public Law 60–349, 35 Stat. 1075, 1077 (1909); *see also Stewart* v. *Abend,* 495 U.S. 207, 233 (1990) (''Under the 1909 Act, it was necessary to publish the work with proper notice to obtain copyright. Publication of a work without proper notice automatically sent a work into the public domain.'').

[3] Sec. 7, Public Law 100–568, 102 Stat. 2853, 2857 (1988).

[4] 17 U.S.C. 405(a).

[5] 17 U.S.C. 405(b).

[6] 17 U.S.C. 401(d). For additional background information on copyright notice, *see* U.S. Copyright Office, Circular 3: Copyright Notice (2013).

[7] *See* 37 CFR 201.20(b)(1) (defining ''audiovisual works, collective works, copies, device, fixed, machine, motion picture, pictorial, graphic, and sculptural works'' to have the same meaning given to them in 17 U.S.C. 101); *id.* at 201.20(b)(2) (defining ''Title 17'' as ''title 17 of the United States Code, as amended by Pub. L. 94–553'').

[8] *See Nat'l Mining Ass'n* v. *McCarthy,* 758 F.3d 243, 250 (D.C. Cir. 2014); 5 U.S.C. 553(b) (notice and comment not required for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'').

copies of a work published in book form, on which the complete title of the work is prominently stated and on which the names of the author or authors, the name of the publisher, the place of publication, or some combination of them, are given.

(iv) The meaning of the terms *front, back, first, last,* and *following,* when used in connection with works published in book form, will vary in relation to the physical form of the copies, depending upon the particular language in which the work is written.

(v) In the case of a work published in book form with a hard or soft cover, the *front page* and *back page* of the copies are the outsides of the front and back covers; where there is no cover, the ''front page,'' and ''back page'' are the pages visible at the front and back of the copies before they are opened.

(vi) A *masthead* is a body of information appearing in approximately the same location in most issues of a newspaper, magazine, journal, review, or other periodical or serial, typically containing the title of the periodical or serial, information about the staff, periodicity of issues, operation, and subscription and editorial policies, of the publication.

(vii) A *single-leaf work* is a work published in copies consisting of a single leaf, including copies on which the work is printed or otherwise reproduced on either one side or on both sides of the leaf, and also folders which, without cutting or tearing the copies, can be opened out to form a single leaf. For the purpose of this paragraph, a work need not consist of textual matter in order to be considered a ''single-leaf work.''

(viii) A *machine-readable copy* is a copy from which the work cannot ordinarily be visually perceived except with the aid of a machine or device, such as magnetic tapes or disks, punched cards, or the like. Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films, and works published in any variety of microform) and works published in visually perceptible form but used in connection with optical scanning devices, are not within this category.

(3) *Manner of affixation and position generally.* (i) In all cases dealt with in this paragraph, the acceptability of a notice depends upon its being permanently legible to an ordinary user of the work under normal conditions of use, and affixed to the copies in such manner and position that, when affixed, it is not concealed from view upon reasonable examination.

(ii) Where, in a particular case, a notice does not appear in one of the precise locations prescribed in this paragraph but a person looking in one of those locations would be reasonably certain to find a notice in another somewhat different location, that notice will be acceptable under this paragraph.

(4) *Works published in book form.* In the case of works published in book form, a notice reproduced on the copies in any of the following positions is acceptable:

(i) The title page, if any;

(ii) The page immediately following the title page, if any;

(iii) Either side of the front cover, if any; or, if there is no front cover, either side of the front leaf of the copies;

(iv) Either side of the back cover, if any; or, if there is no back cover, either side of the back leaf of the copies;

(v) The first page of the main body of the work;

(vi) The last page of the main body of the work;

(vii) Any page between the front page and the first page of the main body of the work, if:

(A) There are no more than ten pages between the front page and the first page of the main body of the work; and

(B) The notice is reproduced prominently and is set apart from other matter on the page where it appears;

(viii) Any page between the last page of the main body of the work and back page, if:

(A) There are no more than ten pages between the last page of the main body of the work and the back page; and

(B) The notice is reproduced prominently and is set apart from the other matter on the page where it appears.

(ix) In the case of a work published as an issue of a periodical or serial, in addition to any of the locations listed in paragraphs (c)(4)(i) through (viii) of this section, a notice is acceptable if it is located:

(A) As a part of, or adjacent to, the masthead;

(B) On the page containing the masthead if the notice is reproduced prominently and is set apart from the other matter appearing on the page; or

(C) Adjacent to a prominent heading, appearing at or near the front of the issue, containing the title of the periodical or serial and any combination of the volume and issue number and date of the issue.

(x) In the case of a musical work, in addition to any of the locations listed in paragraphs (c)(4)(i) through (ix) of this section, a notice is acceptable if it is located on the first page of music.

(5) *Single-leaf works.* In the case of single-leaf works, a notice reproduced on the copies anywhere on the front or back of the leaf is acceptable.

(6) *Contributions to collective works.* For a separate contribution to a collective work to be considered to ''bear its own notice of copyright,'' as provided by 17 U.S.C. 404, a notice reproduced on the copies in any of the following positions is acceptable:

(i) Where the separate contribution is reproduced on a single page, a notice is acceptable if it appears:

(A) Under the title of the contribution on that page;

(B) Adjacent to the contribution; or

(C) On the same page if, through format, wording, or both, the application of the notice to the particular contribution is made clear;

(ii) Where the separate contribution is reproduced on more than one page of the collective work, a notice is acceptable if it appears:

(A) Under a title appearing at or near the beginning of the contribution;

(B) On the first page of the main body of the contribution;

(C) Immediately following the end of the contribution; or

(D) On any of the pages where the contribution appears, if:

(*1*) The contribution is reproduced on no more than twenty pages of the collective work;

(*2*) The notice is reproduced prominently and is set apart from other matter on the page where it appears; and

(*3*) Through format, wording, or both, the application of the notice to the particular contribution is made clear;

(iii) Where the separate contribution is a musical work, in addition to any of the locations listed in paragraphs (c)(6)(i) and (ii) of this section, a notice is acceptable if it is located on the first page of music of the contribution;

(iv) As an alternative to placing the notice on one of the pages where a separate contribution itself appears, the contribution is considered to ''bear its own notice'' if the notice appears clearly in juxtaposition with a separate listing of the contribution by title, or if the contribution is untitled, by a description reasonably identifying the contribution:

(A) On the page bearing the copyright notice for the collective work as a whole, if any; or

(B) In a clearly identified and readily-accessible table of contents or listing of acknowledgements appearing near the front or back of the collective work as a whole.

(7) *Works reproduced in machine-readable copies.* For works reproduced in machine-readable copies, each of the following constitutes an example of acceptable methods of affixation and position of notice:

(i) A notice embodied in the copies in machine-readable form in such a manner that on visually perceptible printouts it appears either with or near the title, or at the end of the work;

(ii) A notice that is displayed at the user's terminal at sign on;

(iii) A notice that is continuously on terminal display; or

(iv) A legible notice reproduced durably, so as to withstand normal use, on a gummed or other label securely affixed to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copies.

(8) *Motion pictures and other audiovisual works.* (i) The following constitute examples of acceptable methods of affixation and positions of the copyright notice on motion pictures and other audiovisual works: A notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it ordinarily would appear whenever the work is performed in its entirety, and that is located:

(A) With or near the title;

(B) With the cast, credits, and similar information;

(C) At or immediately following the beginning of the work; or

(D) At or immediately preceding the end of the work.

(ii) In the case of an untitled motion picture or other audiovisual work whose duration is sixty seconds or less, in addition to any of the locations listed in paragraph (c)(8)(i) of this section, a notice that is embodied in the copies by a photomechanical or electronic process, in such a position that it ordinarily would appear to the projectionist or broadcaster when preparing the work for performance, is acceptable if it is located on the leader of the film or tape immediately preceding the beginning of the work.

(iii) In the case of a motion picture or other audiovisual work that is distributed to the public for private use, the notice may be affixed, in addition to the locations specified in paragraph (c)(8)(i) of this section, on the housing or container, if it is a permanent receptacle for the work.

(9) *Pictorial, graphic, and sculptural works.* The following constitute examples of acceptable methods of affixation and positions of the copyright notice on various forms of pictorial, graphic, and sculptural works:

(i) Where a work is reproduced in two-dimensional copies, a notice affixed directly or by means of a label cemented, sewn, or otherwise attached durably, so as to withstand normal use, of the front or back of the copies, or to any backing, mounting, matting, framing, or other material to which the copies are durably attached, so as to withstand normal use, or in which they are permanently housed, is acceptable.

(ii) Where a work is reproduced in three-dimensional copies, a notice affixed directly or by means of a label cemented, sewn, or otherwise attached durably, so as to withstand normal use, to any visible portion of the work, or to any base, mounting, framing, or other material on which the copies are durably attached, so as to withstand normal use, or in which they are permanently housed, is acceptable.

(iii) Where, because of the size or physical characteristics of the material in which the work is reproduced in copies, it is impossible or extremely impracticable to affix a notice to the copies directly or by means of a durable label, a notice is acceptable if it appears on a tag that is of durable material, so as to withstand normal use, and that is attached to the copy with sufficient durability that it will remain with the copy while it is passing through its normal channels of commerce.

(iv) Where a work is reproduced in copies consisting of sheet-like or strip material bearing multiple or continuous reproductions of the work, the notice may be applied:

(A) To the reproduction itself;

(B) To the margin, selvage, or reverse side of the material at frequent and regular intervals; or

(C) If the material contains neither a selvage nor a reverse side, to tags or labels, attached to the copies and to any spools, reels, or containers housing them in such a way that a notice is visible while the copies are passing through their normal channels of commerce.

(v) If the work is permanently housed in a container, such as a game or puzzle box, a notice reproduced on the permanent container is acceptable.

§ 202.6 [Amended]

■ 5. In § 202.6(e)(1), remove ''SE., an unpublished collection or'' and add in its place ''SE., an unpublished collection, or''.

Dated: August 14, 2017.

Karyn Temple Claggett,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla Hayden,

Librarian of Congress.

[FR Doc. 2017–19285 Filed 9–11–17; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2017–0062; FRL–9967–62–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Regional Haze Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing revisions pursuant to section 110 of the Clean Air Act (CAA) to the Federal Implementation Plan (FIP) addressing regional haze in the State of Montana. The EPA promulgated a FIP on September 18, 2012, in response to the State's decision in 2006 to not submit a regional haze State Implementation Plan (SIP). We proposed revisions to that FIP on April 14, 2017, and are now finalizing those revisions. Specifically, the EPA is finalizing revisions to the FIP's requirement for best available retrofit technology (BART) for the Trident cement kiln owned and operated by Oldcastle Materials Cement Holdings, Inc. (Oldcastle), located in Three Forks, Montana. In response to a request from Oldcastle, and in light of new information that was not available at the time we originally promulgated the FIP, we are revising the nitrogen oxides (NO_X) emission limit for the Trident cement kiln. We are also correcting errors we made in our FIP regarding the reasonable progress determination for the Blaine County #1 Compressor Station and the instructions for compliance determinations for particulate matter (PM) BART emission limits at electrical generating units (EGUs) and cement kilns. This action does not address the U.S. Court of Appeals for the Ninth Circuit's June 9, 2015 vacatur and remand of portions of the FIP regarding the Colstrip and Corette power plants; we plan to address the court's remand in a separate action.

DATES: This rule is effective October 12, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2017–0062. 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 through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6252, *dobrahner.jaslyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Table of Contents

I. Proposed Action

On September 18, 2012, the EPA promulgated a FIP that included a NO_X BART emission limit for the Holcim (US), Inc., Trident cement kiln located in Three Forks, Montana.[1] [2] On April 14, 2017, the EPA proposed to revise the 2012 FIP with respect to the BART emission limit for the Trident cement kiln.[3] Specifically, in response to newly available information regarding the efficiency of controls we determined in our 2012 FIP to be BART, the EPA proposed to revise the NO_X emission limit from 6.5 lb/ton clinker to 7.6 lb/ton clinker (both as 30-day rolling averages). The EPA also proposed to correct errors we made in our FIP regarding the reasonable progress determination for the Blaine County #1 Compressor Station and in the instructions for compliance determinations for PM BART emission limits at EGUs and cement kilns. The proposed correction to our erroneous reasonable progress determination for the Blaine County #1 Compressor Station would result in the source no longer being subject to reasonable progress requirements and would thus remove the NO_X emission limit of 21.8 lbs NO_X/hr (average of three stack test runs). The proposed correction to the PM compliance determination instructions would include regulatory text that was inadvertently left out of the September 18, 2012 final rule and would allow sources to retain the PM stack testing schedule already established under state permits. The EPA proposed to revise the specific portions of Montana's regional haze FIP under our general rulemaking and CAA-specific authorities, as appropriate. *See* 5 U.S.C. 551(5); 42 U.S.C. 7601(a)(1), 7410(c)(1), 7410(k)(6). We did not address the Ninth Circuit's June 9, 2015 vacatur and remand of unrelated portions of the FIP in this action and plan to address the court's remand in a separate action.

II. Background

A. Requirements of the Clean Air Act and the EPA's Regional Haze Rule

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes ''as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' [4] On December 2, 1980, the EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* reasonably attributable visibility impairment.[5] These regulations represented the first phase in addressing visibility impairment. The EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. The EPA promulgated a rule to address regional haze on July 1, 1999.[6] The Regional Haze Rule (RHR) revised the existing visibility regulations to integrate provisions addressing regional haze and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in the EPA's visibility protection regulations at 40 CFR 51.300–51.309. The EPA revised the RHR on January 10, 2017.[7]

The CAA requires each state to develop a SIP to meet various air quality requirements, including protection of visibility.[8] Regional haze SIPs must assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. A state must submit its SIP and SIP revisions to the EPA for approval. Once approved, a SIP is enforceable by the EPA and citizens under the CAA; that is, the SIP is federally enforceable. If a state elects not to make a required SIP submittal, fails to make a required SIP submittal or if we find that a state's required submittal is incomplete or not approvable, then we must promulgate a FIP to fill this regulatory gap.[9] Montana is on the path towards a regional haze SIP and is working closely with the Region to replace all or portions of the FIP as soon as practicable.

B. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states, or the EPA if developing a FIP, to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states' implementation plans to contain such measures as may be necessary to make reasonable progress toward the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the states, or in the case of a FIP, the EPA. Under the RHR, states or the EPA are

[1] Oldcastle Materials Cement Holdings, Inc., (Oldcastle) is the current owner and operator of the Trident cement kiln.

[2] 77 FR 57864.

[3] 82 FR 17948.

[4] 42 U.S.C. 7491(a). 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 that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this section, we mean a ''mandatory Class I Federal area.''

[5] 45 FR 80084, 80084 (December 2, 1980).

[6] 64 FR 35714, 35714 (July 1, 1999) (codified at 40 CFR part 51, subpart P).

[7] 82 FR 3078 (January 10, 2017).

[8] 42 U.S.C. 7410(a), 7491, and 7492(a), CAA sections 110(a), 169A, and 169B.

[9] 42 U.S.C. 7410(c)(1).

directed to conduct BART determinations for such ''BART-eligible'' sources that may reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area.

On July 6, 2005, the EPA published the Guidelines for BART Determinations under the RHR at appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states and the EPA in determining which sources should be subject to the BART requirements and the appropriate emission limits for each applicable source.[10] The process of establishing BART emission limitations follows three steps: First, identify the sources that meet the definition of ''BART-eligible source'' set forth in 40 CFR 51.301;[11] second, determine which of these sources ''emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area'' (a source which fits this description is ''subject to BART''); and third, for each source subject to BART, identify the best available type and level of control for reducing emissions. Section 169A(g)(7) of the CAA requires that states, or the EPA if developing a FIP, must consider the following five factors in making BART determinations: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States or the EPA must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are sulfur dioxide (SO_2), NO_X, and PM.

A SIP or FIP addressing regional haze must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state or the EPA has made a BART determination, the BART controls must be installed and operated as expeditiously as practicable, but no later than five years after the date of the EPA's approval of the final SIP or the date of the EPA's promulgation of the FIP.[12] In addition to what is required by the RHR, general SIP requirements mandate that the SIP or FIP include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART emission limitations. See CAA section 110(a); 40 CFR part 51, subpart K.

C. Reasonable Progress Requirements

In addition to BART requirements, as mentioned previously each regional haze SIP or FIP must contain measures as necessary to make reasonable progress towards the national visibility goals. As part of determining what measures are necessary to make reasonable progress, the SIP or FIP must first identify anthropogenic sources of visibility impairment that are to be considered in developing the long-term strategy for addressing visibility impairment.[13] States or the EPA must then consider the four statutory reasonable progress factors in selecting control measures for inclusion in the long-term strategy—the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of potentially affected sources. *See* CAA section 169A(g)(1) (defining the reasonable progress factors); 40 CFR 51.308(d)(1)(i)(A). Finally, the SIP or FIP must establish reasonable progress goals (RPGs) for each Class I area within the state for the plan implementation period (or ''planning period''), based on the measures included in the long-term strategy.[14] If a RPG provides for a slower rate of improvement in visibility than the rate needed to attain the national goal by 2064, the SIP or FIP must demonstrate, based on the four reasonable progress factors, why the rate to attain the national goal by 2064 is not reasonable and the RPG is reasonable.[15]

D. Consultation With Federal Land Managers (FLMs)

The RHR requires that a state, or the EPA if promulgating a FIP that fills a gap in the SIP with respect to this requirement, consult with FLMs before adopting and submitting a required SIP or SIP revision, or a required FIP or FIP revision.[16] Further, the EPA must include in its proposed FIP a description of how it addressed any comments provided by the FLMs. Finally, a FIP must provide procedures for continuing consultation between the EPA and FLMs regarding the EPA's FIP, visibility protection program, including development and review of FIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

E. Regulatory and Legal History of the 2012 Montana FIP

On September 18, 2012, the EPA promulgated a FIP to address Montana's regional haze obligations that included BART emission limits for two power plants and two cement kilns, and an emission limit for a natural gas compressor station based on reasonable progress requirements.[17] The EPA took this action because Montana decided not to submit a regional haze SIP, knowing that as a result the EPA would be required to promulgate a FIP.[18] The BART emission limits for the two cement kilns and the reasonable progress requirements for the compressor station addressed in this action were not at issue in the petitions filed with the Ninth Circuit Court of Appeals.[19] The EPA plans to address the court's remand in a separate action.

III. Public Comments and EPA Responses

Our proposed action provided a 45-day public comment period and an opportunity to request a public hearing. During this period, we received eight comments from the following four commenters: NorthWestern Energy (NorthWestern),[20] Montana Department of Environmental Quality (MT DEQ) [21] Oldcastle Materials Cement Holdings (Oldcastle; through Bison Engineering, Inc.),[22] and an anonymous public comment. We did not receive a request to hold a public hearing. The comments

[10] 70 FR 39104.

[11] BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were not in operation prior to August 7, 1962, but were in existence on August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. 40 CFR 51.301.

[12] CAA section 169A(g)(4); 40 CFR 51.308(e)(1)(iv).

[13] 40 CFR 51.308(d)(3)(iv).

[14] 40 CFR 51.308(d), (f).

[15] 40 CFR 51.308(d)(1)(ii).

[16] 40 CFR 51.308(i).

[17] 77 FR 57864.

[18] Letter from Richard H. Opper, Director, Montana Department of Environmental Quality to Laurel Dygowski, EPA Region 8 Air Program, June 19, 2006.

[19] Several parties petitioned the Ninth Circuit Court of Appeals to review the EPA's NO_X and SO_2 BART determinations at the power plants, Colstrip and Corette (PPL Montana, LLC, the National Parks Conservation Association, Montana Environmental Information Center, and the Sierra Club). The court vacated the NO_X and SO_2 BART emission limits at Colstrip Units 1 and 2 and Corette and remanded those portions of the FIP back to the EPA for further proceedings. *National Parks Conservation Association* v. *EPA,* 788 F.3d 1134 (9th Cir. 2015).

[20] Letter dated May 12, 2017, from Elizabeth Stimatz to Docket ID No. EPA–R08–OAR–2017–0062.

[21] Letter dated May 30, 2017, from David L. Klemp to Docket ID No. EPA–R08–OAR–2017–0062.

[22] Letter dated May 28, 2017, from Kevin M. Mathews, Bison Engineering, Inc, on behalf of Oldcastle Materials Cement Holdings to EPA, Region 8, Office of Air and Radiation.

discussed portions of the proposal regarding the Trident cement kiln and Blaine County #1 Compressor station; we did not receive any comments on our proposed correction for PM compliance determinations for EGUs and cement kilns.

Comment: NorthWestern agreed with us that the Q/D ratio used to determine that the Blaine County #1 Compressor Station was subject to reasonable progress requirements, where ''Q'' represents actual NO_X + SO_2 emissions in tons per year (tpy) and ''D'' represents the distance in kilometers from the Blaine County #1 Compressor Station to the nearest Class I area, was incorrect as published in our 2012 final rule. Specifically, Northwestern agrees that ''D'' should be 133 kilometers instead of 107 kilometers, and that the revised Q/D ratio would be below the threshold for further evaluation for reasonable progress controls. As such, explained NorthWestern, it is only appropriate that the reasonable progress requirement of a NO_X emission limit of 21.8 lb/hr (average of three stack test runs) as well as the corresponding compliance date, test method, monitoring, recordkeeping and reporting requirements for the Blaine County #1 Compressor Station be removed from the FIP. Additionally, NorthWestern contends that NO_X + SO_2, or ''Q'', should be 745 tpy instead of 1,155 tpy with acknowledgement that this revision may not affect the EPA's determination that the Blaine County #1 Compressor Station should be removed from the reasonable progress emission limit.

Response: We acknowledge NorthWestern's support for our correction to ''D'' in the Q/D ratio for the Blaine County #1 Compressor Station that would effectively remove the source from reasonable progress NO_X requirements for the first implementation period of the RHR. We also agree with NorthWestern that a revision to ''Q'' from 1,155 tpy to 745 tpy will not affect our determination that the Blaine County #1 Compressor Station should be removed from the reasonable progress limit; therefore, we are not addressing the issue of whether ''Q'' should be 745 tpy, as opposed to 1,155 tpy.

Comment: An anonymous commenter stated that the use of Q/D to measure the emissions of NO_X and SO_2 is efficient; however, ''D'' can be calculated mistakenly which could ultimately affect the decision-making related to further investigation or evaluation.

Response: We agree with the commenter's assertions that using an incorrect distance (D) can adversely impact decision making concerning further evaluation of a source.

Comment: MT DEQ expressed support for our proposal to amend the FIP before the compliance dates for the two affected facilities and appreciated our consideration of input from regulated facilities in Montana. MT DEQ also noted that they are working closely with EPA staff to submit a regional haze SIP as soon as practicable.

Response: We acknowledge MT DEQ's support for our action and will continue working with MT DEQ as they develop a regional haze SIP.

Comment: Oldcastle advocated a BART emission limit of 8.3 lb NO_X/ton clinker for the Trident kiln, as opposed to the limit proposed by the EPA of 7.6 lb/ton clinker (both as 30-day rolling averages). Oldcastle derived their proposed emission limit from a projected control efficiency of 40% when applied to a baseline emission rate of 13.9 lb/ton clinker (that is, 13.9 lb/ton clinker × [1 − 40/100] = 8.3 lb/ton clinker).

Response: We maintain that the appropriate BART emission limit for the Trident kiln is 7.6 lb NO_X/ton clinker. In comparison to Oldcastle, we derived our proposed emission limit from the same projected control efficiency of 40%, but applied the control efficiency to a lower baseline emission rate of 12.6 lb/ton clinker (that is, 12.6 lb/ton clinker × [1 − 40/100] = 7.6 lb/ton clinker). Therefore, the proposed emission limits differ only because of the different baseline emission rates used to calculate them. We address the question of the baseline emission rate in a separate response.

The proposed emission limit for the Trident kiln of 7.6 lb/ton clinker is nearly equal to that for the Ash Grove Montana City kiln of 7.5 lb/ton clinker established through a control technology demonstration.[23] The Montana City kiln is of the same general design (long wet kiln) as the Trident kiln, operates in a similar environment, and is a direct competitor in the regional cement market. While the ultimate emission limit for the Montana City kiln was set through a control technology demonstration, rather than a BART determination, it is a reflection of the level of NO_X control that is feasible with SNCR.[24] Moreover, as discussed in a later response, the two kilns have similar baseline emissions. Accordingly, we find that it is reasonable to expect a similar level of controlled NO_X emissions from the Trident kiln when equipped with SNCR.

As stated in our proposed rule, it is challenging to predict the performance of SNCR for long cement kilns. For this reason, in the proposed rule, the EPA invited comment on whether, in place of the BART emission limit of 7.6 lb NO_X/ton clinker, the emission limit for the Trident kiln should be established through a control technology demonstration in a manner similar to that required by consent decrees for the Ash Grove Montana City kiln and other long kilns. Such an approach would have served to demonstrate with some clarity the NO_X emission limit for the Trident kiln. As discussed in a later response, Oldcastle strongly felt that a requirement to use this approach was unnecessary. In the absence of support for a control technology demonstration from Oldcastle, or from other commenters, and for reasons stated elsewhere in response to comments, the EPA is finalizing an emission limit of 7.6 lb/ton clinker.

Comment: Oldcastle agreed with the EPA's assessment in the proposed rule that SNCR is theoretically capable of reducing NO_X emissions from a long wet cement kiln by 40% on average. Oldcastle also recognized that the EPA largely based this assumption on the performance of SNCR demonstrated at the long wet kiln located at the Ash Grove Montana City facility.

Response: The 40% reduction is a demonstrated, rather than theoretical, control effectiveness for SNCR when applied to long cement kilns. As acknowledged by the commenter, this level of control was demonstrated at the Montana City long wet kiln in association with a control technology demonstration.

Moreover, in arriving at an assumed control effectiveness of 40%, the EPA's conclusions were not strictly based on the performance of SNCR at the Montana City kiln. As explained in the proposal, we also re-evaluated the performance of SNCR at the three Ash Grove long wet kilns in Midlothian, Texas, that served as the basis for the emission limit for Trident in our 2012 final rule. In addition, we reviewed the performance of SNCR at several LaFarge kilns subject to control technology demonstrations. The EPA's evaluation of the control effectiveness of SNCR when applied to long cement kilns is further discussed in the Technical

[23] EPA letter to Ash Grove Cement Co., December 29, 2016.

[24] Prior to the control technology demonstration, the EPA established a NO_X BART emission limit of 8.0 lb/ton clinker for the Montana City kiln.

Support Document (TSD) associated with this rulemaking.[25]

Comment: Oldcastle disagreed with the baseline emission rate of 12.6 lb/ton clinker (as the 99th percentile 30-day rolling average) that, after a 40% NO_X reduction with SNCR, the EPA used to calculate the proposed emission limit of 7.6 lb/ton clinker. Oldcastle stated that the appropriate baseline emission rate is 13.9 lb/ton clinker, reflecting a period during late 2012 during which optimal conditions were disrupted by ash ring build-up on the interior wall of the kiln, leading to elevated NO_X emissions. Oldcastle also disagreed with the EPA's characterization of operations during late 2012 as resulting from ''exceptional circumstances'' that should be excluded from the calculation of baseline emissions, and with the EPA's statements in the proposed rule that such conditions could be avoided by proper kiln operation and maintenance. Oldcastle stated that ash rings are part of normal long-term operations and occur approximately twice every year. Finally, in response to the EPA's statements in the proposal that a violation of the emission limit could be prevented by shutting down the kiln to remove ash rings, Oldcastle commented that multiple factors (*e.g.,* such as harm to the kiln, baghouse, and other equipment) must be considered before performing an unplanned shutdown. Oldcastle commented that if elevated NO_X emissions do occur as the result of ash ring build-up, an unplanned shut down could be required purely to ensure compliance with the emission limit.

Response: We disagree that the appropriate baseline emission rate for the purpose of calculating the NO_X emission limit should be 13.9 lb/ton clinker. In our proposed rule, we explained the reasons for retaining the baseline emission rate of 12.6 lb/ton from the 2012 rule.[26] [27] Much of that explanation was in response to a letter submitted by Oldcastle (through Bison Engineering) and dated February 13, 2017, that among other things addressed the baseline emission rate. Oldcastle's comments on the proposed rule largely repeat points made in their February 13, 2017 letter, and do not present new information that the EPA did not address in the proposed rule, or that would lead the EPA to choose a different baseline emission rate (and thereby a different emission limit). As such, in responding to Oldcastle's comments here, we repeat much of the discussion from our proposed rule.

In order to determine a representative baseline NO_X emissions rate for the Trident kiln, the EPA reviewed nine years of actual emissions data (2008–2016, as the 99th percentile 30-day rolling average).[28] This expanded on the period of actual emissions data used to set the baseline in the 2012 rule, which was limited to 2008–2011.

The EPA recognizes that ash rings are part of normal long-term operations for long kilns, and thus the BART emission limit should, generally speaking, allow operation of a kiln while a typical ash ring is present, provided that the SNCR system is reducing emissions during the ash ring event as much as it reasonably can. Accordingly, the EPA has considered the ash ring issue when establishing the single value of the baseline emission rate upon which the BART emission limit is based.

The original emissions baseline period of 2008–2011 used in the 2012 FIP, together with the emissions for 2013 through 2016, yield eight years of emissions data in support of the 12.6 lb/ton clinker baseline used by the EPA.[29] Assuming, as asserted by Oldcastle, that ash rings occur approximately twice per year, some 16 ash ring events can be statistically expected to have occurred during this eight-year period.

From the set of approximately 2,400 values for 30-day average emission during the eight-year period,[30] the EPA has chosen the 99th percentile value, 12.6 lb/ton clinker, as the baseline emission rate for setting the BART emission limit (by reducing this value by 40%). We believe this is a reasonable choice in that it will mean that for most ash ring events compliance with the BART emissions limit would not necessitate removing the ash ring earlier than when the kiln operators have seen fit to remove similar ash rings during the eight years of operation of the kiln. Oldcastle is arguing that the baseline emission rate should instead be set at 13.9 lb/ton of clinker. Notably, there were about 29 30-day average emission values above 13.9 lb/ton during the 2012 ash ring event. Under both the emission limit we proposed and the emission limit favored by Oldcastle, if an ash ring similar to the 2012 event were to occur in the future, the BART emission limit could not be met merely by achieving 40% emission reductions via SNCR. Thus, Oldcastle and we agree that not every ash ring event must be accommodated by the BART emission limit, and Oldcastle and we agree that Oldcastle should be expected to intervene, differently than the kiln operator actually did in 2012, if an event like the one that occurred in 2012 occurs again (while also applying SNCR). Where Oldcastle and we disagree is that Oldcastle favors a higher BART limit that would allow Oldcastle to take no action, which is different from the operator's past ash ring-correcting practices with respect to ash ring events that have more moderate effects on emissions than the 2012 ash ring event. While we do not have clear evidence of whether and when such more moderate ash rings events have occurred in the past and what effects they had on NO_X emissions, it reasonable to predict that in the future there may be events for which our proposed emission limit would require corrective action (beyond the application of SNCR) that is different than the operator's ash ring-correcting practices of the past, while the emission limit favored by Oldcastle would not require this. The considerations on how to respond to Oldcastle's comments on this issue are discussed in more detail in the paragraphs that follow.

The representativeness of the baseline NO_X emission rate of 12.6 lb/ton clinker used for setting the emission limit at the Trident kiln is supported by the nearly identical emissions observed at the Montana City kiln in association with the control technology demonstration. During the baseline collection period for the Montana City kiln, between March and August 2014, the 99th percentile 30-day rolling average emission rate without SNCR applied was 12.8 lb NO_X/ton clinker.[31] Though this represents a shorter baseline period than that considered for Trident, it reinforces that the two kilns should be subject to similar emission limits after being equipped with SNCR. By contrast, using the higher baseline emission rate of 13.9 lb/ton clinker for Trident would result in a relatively large difference between the emission limits—7. 5 lb/ton clinker

[25] Refer to Technical Support Document—Oldcastle Trident Federal Implementation Plan Revision, March 8, 2017 (''TSD for Oldcastle''; EPA docket ID EPA–R08–OAR–2017–0062–0042).

[26] The original source of the 12.6 lb/ton clinker was a submittal from the previous owner of the Trident facility, Holcim, Inc. See footnote 93 in 2012 proposed rule at 77 FR 24019.

[27] See proposed rule at 82 FR 17953/4.

[28] See TSD for Oldcastle, pages 8–10.

[29] The baseline periods of 2008–2011 and 2013–2016 yield an identical baseline emission rate of 12.6 lb/ton clinker (as the 99th percentile 30-day rolling average). Data for 2012, while reviewed, was not included in the calculation of the baseline due to the unusually elevated NO_X emissions that occurred late in that year.

[30] Does not include days when the kiln was not operated.

[31] See spreadsheet titled ''Summary of Ash Grove Montana City Control Technology Demonstration Data.xlsx,'' March 8, 2017, prepared by the EPA.

for Montana City, and 8.3 lb/ton clinker for Trident.

Moreover, if the EPA were to use the higher baseline emission rate of 13.9 lb/ton clinker (again yielding an emission limit of 8.3 lb/ton clinker at a 40% reduction with SNCR), then the emission limit would be overly lenient during periods of otherwise normal kiln operation, and the SNCR could be operated at efficiencies well below the demonstrated level of control effectiveness. That is, when baseline emissions are at otherwise normal levels, the control effectiveness of the SNCR could be reduced below the level at which it is capable of performing by reducing the amount of reagent injected into the kiln, while still meeting the emission limit. For example, consider if SNCR had been operated in 2016, the last full year for which emissions data is available, where the uncontrolled 30-day rolling average emissions ranged from 8.9 to 12.6 lb/ton clinker, with an average of 10.4 lb/ton clinker.[32] At an emission limit of 8.3 lb/ton clinker (corresponding to a 13.9 lb/ton clinker baseline), and depending on the 30-day period, the SNCR could have been operated at a control efficiency of 6.7% to 34.1%, and at an average of only 20.5%. Indeed, for long periods, the SNCR could have been operated well below the 40% reduction that the EPA has concluded, and Oldcastle has agreed, SNCR can achieve. Though this opportunity to operate the SNCR system at a lesser level of effectiveness would also occur at the proposed emission limit of 7.6 lb/ton, it would occur less frequently and the effect would be much less pronounced, yet the proposed emission limit of 7.6 lb/ton still allows for normal variation in uncontrolled NO_X emissions (to include emissions variation due to ash ring formation). In essence, allowing for the higher baseline advocated by the commenter would unnecessarily undermine the basic intent of the BART controls: To lower emissions that impact visibility using the best available control technology.

In conclusion, the EPA's thorough consideration of nine years of actual emissions data and the application of a 40% reduction to the 99th percentile value of the historical set of 30-day average emission values, leads to an appropriate BART emission limit for the Trident kiln.

Comment: Oldcastle stated that the EPA's proposed BART determination of 7.6 lb/ton clinker did not address control costs or visibility improvement. They commented that, based on their updated analysis,[33] the costs associated with the emission limit are not justified by the visibility benefits.

Response: We disagree with the implication that it was necessary to re-weigh the costs and visibility benefits of SNCR in this action, which was not a new or updated control technology determination but rather a revision to how the EPA calculated the ultimate emission limit given the technology selected pursuant to our previous five-factor analysis. *See* 82 FR 17948, 17951. The BART Guidelines provide that states or the EPA, when evaluating technically feasible technologies pursuant to a five-factor analysis, perform the analysis ''tak[ing] into account the most stringent emission control level that the technology is capable of achieving.'' 40 CFR part 51, appendix Y, IV.D.1. The Guidelines further state that the control effectiveness of a technology should be informed by, among other things, recent regulatory decisions, engineering estimates, and the experience of other sources. *Id.* The EPA determined in 2012 that BART is based on SNCR with a 50% control effectiveness for the Trident kiln, *see* 77 FR 57864, 57882. No party requested judicial review of that determination. However, since the time of our 2012 rule, sources and the EPA have gained further experience related to using SNCR to control NO_X from long wet kilns; and additional data and experience indicate that the most stringent level of emission control possible under these circumstances may not be 50%, as previously assumed. However, as Oldcastle assured the EPA when they first approached us to request a revised NO_X emission limit for the Trident kiln in May 2016 and throughout the process of revising the emission limit, they are committed to installing and operating SNCR on the kiln.[34] Most recently, Oldcastle restated their commitment to doing so in comments on the proposed rule.[35] For this reason, and as we stated in the proposed rule, the EPA did not find it necessary or appropriate to revisit the selection of SNCR as the BART control technology was determined in the 2012 rule.

Additionally, given that Oldcastle has committed to the most effective control technology for long kilns, SNCR, and in fact had largely completed construction by the time we published the proposed rule in April 2017, there would be little merit in retrospectively assessing less effective control technologies in an updated five-factor BART analysis. The BART Guidelines reflect that it is reasonable, if a source has already committed to a BART determination that consists of the most stringent controls available, to forgo completing the remaining analyses pursuant to a BART determination. 40 CFR part 51, appendix Y, IV.D.1. Oldcastle has communicated to the EPA that it is committed to installing and operating SNCR on the Trident kiln. Therefore, consistent with the reasoning of the BART Guidelines, we found that it is not necessary in this instance to revisit the cost effectiveness and visibility benefits associated with SNCR, and instead as explained in our proposal, constrained this FIP revision to considering only the appropriate control effectiveness associated with that control technology.

Because Oldcastle has committed to installing SNCR as the BART control, it is only the emission limit that is in dispute. However, even if we had revisited the full five-factor BART analysis in this action, it is very likely we would have arrived at the same emission limit we are finalizing today. The 2012 rule established an emission limit of 6.5 lb/ton clinker, while we have proposed 7.6 lb/ton clinker, and Oldcastle advocates for 8.3 lb/ton clinker. Note that compliance with a more stringent emission limit requires that more reagent be injected into the kiln to reduce NO_X than for a less stringent emission limit, thereby increasing Oldcastle's annual costs to operate the SNCR. Though annual costs would increase with a more stringent emission limit, NO_X reductions can generally be expected to increase in proportion to those costs. An exception is if the amount of reagent injected is increased to the point that it is no longer effective at reducing NO_X and leads to excessive ammonia slip (that is, wasted reagent). However, as demonstrated at the Montana City kiln, a 40% reduction in NO_X, which serves as the basis for Trident's emission limit, can be achieved at acceptable levels of ammonia slip.[36] Therefore, the cost effectiveness of SNCR, when calculated as the costs per ton of pollutant

[32] See spreadsheet titled ''Oldcastle Trident NO_X emissions 2008 through 2016 with additions by EPA.xlsx,'' March 8, 2017, prepared by the EPA (EPA docket ID EPA–R08–OAR–2017–0062–0039).

[33] Oldcastle is referring to submittals to the EPA that were cited in the proposed rule. See footnote 22 at 82 FR 17952. These submittals can be found in the docket.

[34] *See, e.g.*, Letter dated Sept. 30, 2016, from Kevin M. Mathews, Bison Engineering, Inc. on behalf of Oldcastle Materials Cement Holdings to EPA, Region 8, Office of Air and Radiation, pages 2, 6, 19.

[35] Letter dated May 28, 2017, from Kevin M. Mathews, Bison Engineering, Inc, on behalf of Oldcastle Materials Cement Holdings to EPA, Region 8, Office of Air and Radiation, page 3.

[36] Refer to proposed rule at 71 FR 17953.

removed (*i.e.,* $/ton) in accordance with the BART Guidelines,[37] would be roughly the same at any of the three emission limits under consideration.[38] Further, due to the increase in NO_X reductions, greater visibility benefits would be expected to occur as the emission limit becomes more stringent. Because the cost effectiveness would remain roughly constant, while the visibility benefits would increase, we see no reason that the SNCR should be operated below the level of control effectiveness demonstrated for the technology (*i.e.,* a 40% NO_X reduction). Therefore, we are finalizing an emission limit for the Trident kiln consistent with that level of control: 7.6 lb/ton clinker.

Comment: Oldcastle commented that they strongly feel that a requirement to conduct a control technology demonstration, such as that conducted for the Ash Grove Montana City kiln under consent decree, is problematic and unnecessary. Further, they commented that if such a control technology demonstration were to be conducted, the results would likely be similar to those for the Montana City kiln. Finally, Oldcastle stated that a control technology demonstration would not address the economic and operational concerns (*e.g.,* ash rings) that they also raised in comments.

Response: Because Oldcastle, or other commenters, have not expressed support for a control technology demonstration, and because the results from the Montana City kiln demonstration can effectively and reasonably be applied to the Trident kiln, we are not requiring such a demonstration for the Trident kiln. Instead, we are finalizing an emission limit of 7.6 lb/ton clinker.

IV. Final Action

The EPA is taking final action to revise portions of the Montana Regional Haze FIP. Specifically, the EPA is revising the BART NO_X emission limit in the second line of the table in 40 CFR 52.1396(c)(2) for the Oldcastle Trident kiln from 6.5 lb NO_X/ton clinker to 7.6 lb NO_X/ton clinker (30-day rolling averages).[39] We are also making two corrections: (1) Removing the reasonable progress NO_X emission limit of 21.8 lb/hr (average of three stack test runs) found at 40 CFR 52.1396(c)(3) for the Blaine County #1 Compressor Station, Engine #1 and #2, including removing the corresponding compliance date at 40 CFR 52.1396(d), test method (40 CFR 52.1396(e)(5)), testing requirements (40 CFR 52.1396(j)) and monitoring, recordkeeping, and reporting requirements found at 40 CFR 52.1396(k) from the FIP, and (2) revising the regulatory text found at 40 CFR 52.1396(f)(1) and (2) related to compliance determinations for particulate matter for electrical generating units and cement kilns. Finally, we are changing ''Holcim'' references to ''Oldcastle'' and ''Trident'' at 40 CFR 52.1396(a), (c)(2), and (f)(2)(ii) and replacing the compliance date timeframes in 40 CFR 52.1396(d) with the actual compliance dates based on the effective date of the 2012 FIP.

We find that the revisions will not interfere with any applicable requirement concerning attainment, reasonable progress, or any other applicable requirement of the CAA, because the FIP, as revised by this action, will result in a significant reduction in emissions compared to current levels. Although this revision will allow an increase in emissions after October 2017 as compared to the prior FIP, the FIP as a whole will still result in overall NO_X and SO_2 reductions compared to those currently allowed. In addition, the areas where the Trident cement kiln and the Blaine County #1 Compressor Station are located have not been designated nonattainment for any National Ambient Air Quality Standards (NAAQS). We also find that we satisfied the applicable requirements for coordination and consultation with the Federal Land Managers (FLMs) because we described the proposed revisions to the regional haze FIP with the Forest Service, the Fish and Wildlife Service and the National Park Service on Thursday, March 2, 2017, and sent a draft of our proposed regional haze FIP revisions to the Forest Service, the Fish and Wildlife Service and the National Park Service on March 9, 2017.[40]

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866[41] and was therefore not submitted to the Office of Management and Budget (OMB) for review. This final rule revision applies to only five facilities in the State of Montana. It is therefore not a rule of general applicability.

B. Executive Order 13711: Reducing Regulation and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 action because it is not subject to Executive Order 12866.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA).[42] Because this final rule revises the reporting requirements for 4 facilities and removes all requirements for an additional facility, the PRA does not apply.

D. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This rule does not impose any requirements or create impacts on small entities as no small entities are subject to the requirements of this rule.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The revisions to the FIP reduce private sector expenditures. Additionally, we do not foresee significant costs (if any) for state and local governments.

F. Executive Order 13132: Federalism

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

[37] 70 FR 39167.

[38] More precisely, the cost effectiveness (as $/ton) would slightly decrease in value at a more stringent emission limit because the fixed capital costs would be distributed over a greater number of tons of NO_X reduced.

[39] The table in 40 CFR 52.1396(c)(2) currently refers to Holcim (US) Inc. As described later on, the EPA is also updating this table to reflect the Trident kiln's new ownership.

[40] We did not receive any formal comments from the FLM agencies.

[41] 58 FR 51735, 51738 (October 4, 1993).

[42] 44 U.S.C. 3501 *et seq.*

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

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. However, the EPA did send letters to each of the Montana tribes explaining our regional haze FIP revision action and offering consultation; however, no tribe asked for consultation.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997). The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). As explained previously, the Montana Regional Haze FIP, as revised by this action, will result in a significant reduction in emissions compared to current levels.

L. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability.

M. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 2017. Pursuant to CAA section 307(d)(1)(B), this section is subject to the requirements of the CAA section 307(d) as it promulgates a FIP under CAA section 110(c). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

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

Dated: September 1, 2017.

E. Scott Pruitt,

Administrator.

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 BB—Montana

■ 2. Section 52.1396 is amended by:

■ a. Revising paragraph (a);

■ b. Revising paragraph (c)(2);

■ c. Removing and reserving paragraph (c)(3);

■ d. Revising paragraph (d);

■ e. Removing paragraph (e)(5);

■ f. Revising the heading of paragraph (f) and paragraphs (f)(1), (f)(2) introductory text, and (f)(2)(ii); and

■ g. Removing and reserving paragraphs (j) and (k).

The revisions read as follows:

§ 52.1396 Federal implementation plan for regional haze.

(a) *Applicability.* This section applies to each owner and operator of the following coal-fired electric generating units (EGUs) in the State of Montana: PPL Montana, LLC, Colstrip Power Plant, Units 1, 2; and PPL Montana, LLC, JE Corette Steam Electric Station. This section also applies to each owner and operator of cement kilns at the following cement production plants: Ash Grove Cement, Montana City Plant; and Oldcastle Materials Cement Holdings, Inc., Trident Plant. This section also applies to each owner and operator of CFAC and M2 Green Redevelopment LLC, Missoula site.

Note to Paragraph (a): On June 9, 2015, the NO_X and SO_2 emission limits for Colstrip Units 1 and 2 and Corette were vacated by court order.

* * * * *

(c) * * *

(2) The owners/operators of cement kilns subject to this section shall not emit or cause to be emitted PM, SO_2 or NO_X in excess of the following limitations, in pounds per ton of clinker produced, averaged over a rolling 30-day period for SO_2 and NO_X:

Source name	PM emission limit	SO_2 emission limit (lb/ton clinker)	NO_X emission limit (lb/ton clinker)
Ash Grove, Montana City	If the process weight rate of the kiln is less than or equal to 30 tons per hour, then the emission limit shall be calculated using $E = 4.10p^{0.67}$ where E = rate of emission in pounds per hour and p = process weight rate in tons per hour; however, if the process weight rate of the kiln is greater than 30 tons per hour, then the emission limit shall be calculated using $E = 55.0p^{0.11} - 40$, where E = rate of emission in pounds per hour and P = process weight rate in tons per hour..	11.5	8.0
Oldcastle, Trident	0.77 lb/ton clinker	1.3	7.6

* * * * *

(d) *Compliance date.* The owners and operators of the BART sources subject to this section shall comply with the emission limitations and other requirements of this section as follows, unless otherwise indicated in specific paragraphs: Compliance with PM emission limits is required by November 17, 2012. Compliance with SO_2 and NO_X emission limits is required by April 16, 2013, unless installation of additional emission controls is necessary to comply with emission limitations under this rule, in which case compliance is required by October 18, 2017.

Note to Paragraph (d): On June 9, 2015, the NO_X and SO_2 emission limits, and thereby compliance dates, for Colstrip Units 1 and 2 and Corette were vacated by court order.

* * * * *

(f) *Compliance determinations for particulate matter*—(1) *EGU particulate matter BART emission limits.* Compliance with the particulate matter BART emission limits for each EGU BART unit shall be determined by the owner/operator from annual performance stack tests. Within 60 days of the compliance deadline specified in paragraph (d) of this section, and on at least an annual basis thereafter, the owner/operator of each unit shall conduct a stack test on each unit to measure the particulate emissions using EPA Method 5, 5B, 5D, or 17, as appropriate, in 40 CFR part 60, appendix A. A test shall consist of three runs, with each run at least 120 minutes in duration and each run collecting a minimum sample of 60 dry standard cubic feet. Results shall be reported by the owner/operator in lb/MMBtu. The results from a stack test meeting the requirements of this paragraph (f)(1) that was completed within 12 months prior to the compliance deadline can be used in lieu of the first stack test required. If this option is chosen, then the next annual stack test shall be due no more than 12 months after the stack test that was used. In addition to annual stack tests, owner/operator shall monitor particulate emissions for compliance with the BART emission limits in accordance with the applicable Compliance Assurance Monitoring (CAM) plan developed and approved in accordance with 40 CFR part 64.

(2) *Cement kiln particulate matter BART emission limits.* Compliance with the particulate matter BART emission limits for each cement kiln shall be determined by the owner/operator from annual performance stack tests. Within 60 days of the compliance deadline specified in paragraph (d) of this section, and on at least an annual basis thereafter, the owner/operator of each unit shall conduct a stack test on each unit to measure particulate matter emissions using EPA Method 5, 5B, 5D, or 17, as appropriate, in 40 CFR part 60, appendix A. A test shall consist of three runs, with each run at least 120 minutes in duration and each run collecting a minimum sample of 60 dry standard cubic feet. The average of the results of three test runs shall be used by the owner/operator for demonstrating compliance. The results from a stack test meeting the requirements of this paragraph (f)(2) that was completed within 12 months prior to the compliance deadline can be used in lieu of the first stack test required. If this option is chosen, then the next annual stack test shall be due no more than 12 months after the stack test that was used. Clinker production shall be determined in accordance with the requirements found at 40 CFR 60.63(b). Results of each test shall be reported by the owner/operator as the average of three valid test runs. In addition to annual stack tests, owner/operator shall monitor particulate emissions for compliance with the BART emission limits in accordance with the applicable Compliance Assurance Monitoring (CAM) plan developed and approved in accordance with 40 CFR part 64.

* * * * *

(ii) For Trident, the emission rate (E) of particulate matter shall be computed by the owner/operator for each run in lb/ton clinker, using the following equation:

$$E = (C_sQ_s)/PK$$

Where:

E = emission rate of PM, lb/ton of clinker produced;

C_s = concentration of PM in grains per standard cubic foot (gr/scf);

Q_s = volumetric flow rate of effluent gas, where C_s and Q_s are on the same basis (either wet or dry), scf/hr;

P = total kiln clinker production, tons/hr; and

K = conversion factor, 7,000 gr/lb.

* * * * *

[FR Doc. 2017–19210 Filed 9–11–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2017–0361; FRL–9967–57–Region 4]

Air Plan Approval; KY; Revisions to Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the State Implementation Plan (SIP) submission submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), on September 9, 2016. The changes to the SIP that EPA is taking final action to approve pertain to changes to the Commonwealth's air quality standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (both PM_{10} and $PM_{2.5}$), and sulfur dioxide (SO_2) to reflect the historical and current National Ambient Air Quality Standards (NAAQS). EPA has determined that the September 9, 2016, SIP revision is consistent with the Clean Air Act (CAA or Act). KDAQ's submission also included additional air quality standards for hydrogen sulfide, fluorides, and odor; however, EPA is not approving these state standards into the SIP.

DATES: This rule will be effective October 12, 2017.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2017–0361. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms.

Sanchez can be reached via telephone at (404) 562–9644 or via electronic mail at *sanchez.madolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 108 and 109 of the CAA govern the establishment, review, and revision, as appropriate, of the NAAQS to protect public health and welfare. The CAA requires periodic review of the air quality criteria—the science upon which the standards are based—and the standards themselves. EPA's regulatory provisions that govern the NAAQS are found at 40 CFR 50—*National Primary and Secondary Ambient Air Quality Standards.*

In a proposed rulemaking published on July 17, 2017, EPA proposed to approve changes to the Commonwealth's regulations for ambient air quality standards in the Kentucky SIP, submitted by the Commonwealth on September 9, 2016. *See* 82 FR 32671. The September 9, 2016, submission amends the Commonwealth's regulations for ambient air quality standards which are found at 401 KAR 53:010. The revision also includes textual changes to language in the regulation to provide regulatory clarity, as well as updating and reformatting the Appendix A table of ambient air quality standards and Appendix A footnotes. The details of Kentucky's submission and the rationale for EPA's action are explained in the proposed rulemaking. Comments on the proposed rulemaking were due on or before August 16, 2017. EPA received no adverse comments on the proposed action.

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Kentucky regulation 401 KAR 53:010—*Ambient air quality standards,* effective July 19, 2016. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and/or at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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.[1]

III. Final Action

EPA is taking final action to approve the Commonwealth of Kentucky SIP revision submitted on September 9, 2016. The submission revises Kentucky regulation 401 KAR 53:010 to reflect changes to the Commonwealth's air quality standards for CO, Pb, NO_2, ozone, both PM_{10} and $PM_{2.5}$, and SO_2 to reflect the historical and current NAAQS. The revision also includes textual changes to language in the regulation to provide regulatory clarity, as well as updating and reformatting the Appendix A table of ambient air quality standards and Appendix A footnotes.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive 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 November 13, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

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

requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 25, 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 S—Kentucky

■ 2. Section 52.920(c), Table 1 is amended under Chapter 53 by revising the entry for ''401 KAR 53:010'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 53 Ambient Air Quality				
*	*	*	*	*
401 KAR 53:010	Ambient air quality standards	07/19/16	09/12/17, [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 2017–19212 Filed 9–11–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 403

[CMS–6076–IFR2]

RIN 0991–AC0

Adjustment of Civil Monetary Penalties for Inflation; Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule; correcting amendment.

SUMMARY: In the September 6, 2016 **Federal Register** (81 FR 61538), we published an interim final rule (IFR) issuing a new regulation to adjust for inflation the maximum civil monetary penalty amounts for the various civil monetary penalty authorities for all agencies within HHS. This correcting amendment corrects a limited number of technical and typographical errors identified in the CMS provisions of the September 6, 2016 IFR.

DATES:

Effective date: This correcting amendment is effective September 12, 2017.

Applicability date: The corrections indicated in this correcting amendment are applicable beginning September 6, 2016.

FOR FURTHER INFORMATION CONTACT: Ian Mahoney, (410) 786–4247.

SUPPLEMENTARY INFORMATION:

I. Background

In the September 6, 2016 (81 FR 61538) **Federal Register**, in the interim final rule (IFR) titled ''Adjustment of Civil Monetary Penalties for Inflation,'' there is a technical error identified and corrected in this correcting amendment. The provisions of this correcting amendment are effective as if they had been included in the IFR published on September 6, 2016 and, accordingly, are applicable beginning September 6, 2016.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (section 701 of the Bipartisan Budget Act of 2015, Pub. L. 114–74, enacted on November 2, 2015), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) (Pub. L. 101–410, 104 Stat. 890 (1990) (codified as amended at 28 U.S.C. 2461 note 2(a)), is intended to improve the effectiveness of civil monetary penalties and to maintain the deterrent effect of such penalties by requiring agencies to adjust the civil monetary penalties for inflation on an initial basis and annually. The U.S. Department of Health and Human Services (HHS) lists the civil monetary penalties and the penalty amounts administered by all of its agencies in tabular form in 45 CFR 102.3.

II. Summary of Errors

On page 61561 of the IFR, in the table indicating the changes in regulations text for § 403.912(a)(1), we inadvertently made errors in the specifying the minimum and maximum civil monetary penalty amounts to which the inflation adjustment would be applied (the ''base penalty range''). Specifically, we inadvertently changed the base penalty range from $1,000 and $10,000 to $10,000 and $100,000, respectively. The statutory authority for this civil money penalty is section 1128G of the Act (42 U.S.C. 1320a–7h), which requires applicable manufacturers to report annually to CMS any payments or other transfers of value to covered recipients. In addition, the statute requires applicable manufacturers and applicable group purchasing organizations to report annually to CMS ownership investment interests held by physicians or their family members in such entities. Section 1128G(b)(1) of the Act provides that if an applicable manufacturer or applicable group purchasing organization fails to report the required information in timely manner to CMS, the entity is subject to a civil money penalty amount between $1,000 and $10,000 for each payment or transfer of value or ownership or investment interest not reported, up to an annual maximum of $150,000 per submission by a reporting entity. Accordingly, we are revising

§ 403.912(a)(1) to correct the typographical error in the penalty ranges originally established in section 1128G of the Act.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

In accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), we ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide for a period of public comment before the provisions of a rule take effect. However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice. Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

We believe that this document does not constitute a rulemaking that would be subject to the requirement for a public comment period. Specifically, we find that undertaking further notice and comment procedures to correct the IFR in unnecessary and contrary to public interest.

First, we believe it is unnecessary to allow for public comment regarding whether to correct a misstated penalty range that is inconsistent with, and exponentially higher than, that permitted by the authorizing statute. As noted previously, this correcting amendment merely corrects a typographical error in the base penalty range to which the inflation increase implemented by the IFR would be applied. This correction is necessary to ensure that the base penalty range does not exceed the range authorized under section 1128G(b)(1)(A) of the Act, as adjusted under the Inflation Adjustment Act. Public comment on this correction amendment is unnecessary because it could never change the statutory penalty range at issue. We note that the IFR never indicated that we were increasing the base penalty range identified in this or any other civil money penalty authority. In fact, on page 61548 of the IFR, we indicated that the new inflation adjusted penalty range under § 403.912(a) would be from $1,087 to $10,874 per unreported arrangement, up to a calendar year cap of $163,117. Furthermore, we note that the erroneous base range stated on page 61561 of the IFR makes little sense in light of the statutory calendar year cap for this penalty. Under the original base penalty range, CMS could impose the minimum penalty of $1,000 for up to 150 unreported arrangements. Under the erroneous regulations text in the IFR, CMS would be permitted to impose the minimum penalty amount of $10,000 for only a maximum of 16 unreported arrangements. Even if we had the statutory authority to increase the base penalty range through rulemaking, the maximum penalty amount erroneously stated in the IFR is patently inconsistent with one of the stated policies of the IFR—to maintain the deterrent effect of civil money penalties. Second, we believe that providing an opportunity for public comment on this correcting amendment is contrary to the public interest. First, as noted previously, public comment in this case could never change the statutory penalty range at issue. We believe that it would not be in the public interest to offer a futile comment period. Second, the entities subject to civil money penalties authorized under section 1128G(b) of the Act should be advised, in a timely manner, of the correct amounts for which they could be liable. It is in the public interest to ensure that the regulations accurately reflect the statutory authority.

For similar reasons, we are also waiving the 30-day delay in effective date for this correcting amendment. First, we believe it is unnecessary to delay the effective date of corrections to a typographical error in regulation text that was patently inconsistent with the relevant statutory authority. Second, we believe that delaying the effective date of these corrections would be contrary to the public interest because the entities subject to civil money penalties should be advised, in a timely manner, of the correct amounts for which they could be liable. Therefore, we find good cause to waive the 30-day delay in effective date.

Finally, the corrections indicated in this correcting amendment are applicable to civil monetary penalties as if they had been included in the IFR. That is, the corrections are applicable to civil money penalties imposed under § 403.912(a)(1) beginning September 6, 2016, the date the IFR became effective. We do not believe this correcting amendment constitutes retroactive rulemaking because the erroneous base penalty range was never authorized under section 1128G(b) of the Act. In addition, we have not imposed any penalties under § 403.912(a)(1) since the effective date of the IFR.

List of Subjects in 42 CFR Part 403

Grant programs—health, Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

Accordingly, as noted in section II. of this document, the Centers for Medicare & Medicaid Services is making the following correcting amendments to 42 CFR part 403:

PART 403—SPECIAL PROGRAMS AND PROJECTS

■ 1. The authority citation for part 403 continues to read as follows:

Authority: 42 U.S.C. 1395b–3 and Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 403.912 [Amended]

■ 2. Section 403.912(a)(1) is amended by removing the phrase ''not less than $10,000, but not more than $100,000'' and adding in its place the phrase ''not less than $1,000, but not more than $10,000.''

Dated: August 17, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 6, 2017.

Thomas E. Price,

Secretary, Department of Health and Human Services.

[FR Doc. 2017–19311 Filed 9–11–17; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12–106, FCC 17–41]

Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations* Report and Order's third-party fundraising rules. This document is consistent with the Report and Order,

which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The amendments to 47 CFR 73.503(e)(1), 73.621(f)(1), and 73.2527(e)(14), published at 82 FR 21127, May 5, 2017, are effective November 13, 2017.

FOR FURTHER INFORMATION CONTACT: Kathy Berthot, Media Bureau, Policy Division, at (202) 418–7454, or email: *kathy.berthot@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on August 30, 2017, OMB approved, for a period of three years, the information collection requirements relating to the third-party fundraising rules contained in the Commission's Report and Order, FCC 17–41, published at 82 FR 21127, May 5, 2017. The OMB Control Number is 3060–1174. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1174, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on August 30, 2017, for the information collection requirements contained in the Commission's rules at 47 CFR 73.503(e)(1), 73.621(f)(1), and 73.2527(e)(14).

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1174.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1174.

OMB Approval Date: August 30, 2017.

OMB Expiration Date: August 31, 2020.

Title: Section 73.503, Licensing requirements and service; Section 73.621, Noncommercial educational TV stations; Section 73.3527, Local public inspection file of noncommercial educational stations.

Form Number: N/A.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 2,200 respondents; 33,000 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority which covers these information collections is contained in 47 U.S.C. 151, 154(i), 303, and 399B.

Total Annual Burden: 16,500 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Act: No impact(s).

Needs and Uses: On April 20, 2017, the Commission adopted a Report and Order in MB Docket No. 12–106, FCC 17–41, *In the Matter of Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations.* Under the Commission's existing rules, a noncommercial educational (NCE) broadcast station may not conduct fundraising activities to benefit any entity besides the station itself if the activities would substantially alter or suspend regular programming. The Report and Order relaxes the rules to allow NCE stations to spend up to one percent of their total annual airtime conducting on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations.

The following is a description of the information collection requirements for which the Commission received OMB approval:

Audience disclosure: Pursuant to 47 CFR 73.503(e)(1), a noncommercial educational FM broadcast station that interrupts regular programming to conduct fundraising activities on behalf of third-party non-profit organizations must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising. Pursuant to 47 CFR 73.621(f)(1), a noncommercial educational TV broadcast station that interrupts regular programming to conduct fundraising activities on behalf of third-party non-profit organizations must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising. The audience disclosure must be aired at the beginning and the end of each fundraising program and at least once during each hour in which the program is on the air.

Retention of information on fundraising activities in local public inspection file: Pursuant to 47 CFR 73.3527(e)(14), each noncommercial educational FM broadcast station and noncommercial educational TV broadcast station that interrupts regular programming to conduct fundraising activities on behalf of a third-party non-profit organization must place in its local public inspection file, on a quarterly basis, the following information for each third-party fundraising program or activity: The date, time, and duration of the fundraiser; the type of fundraising activity; the name of the non-profit organization benefitted by the fundraiser; a brief description of the specific cause or project, if any, supported by the fundraiser; and, to the extent that the station participated in tallying or receiving any funds for the non-profit group, an approximation, to the nearest $10,000, of the total funds raised. The information for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (*e.g.,* January 10 for the quarter October–December, April 10 for the quarter January–March, etc.).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2017–19218 Filed 9–11–17; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 82, No. 175
Tuesday, September 12, 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 HOMELAND SECURITY

U.S. Customs and Border Protection

8 CFR Chapter I

19 CFR Chapter I

[USCBP–2017–0035]

Reducing Regulation and Controlling Regulatory Costs

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Request for information.

SUMMARY: As part of its implementation of Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' issued by the President on January 30, 2017, and Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' issued by the President on February 24, 2017, U.S. Customs and Border Protection (CBP) within the Department of Homeland Security (DHS) is seeking comments and information from interested parties to assist CBP in identifying existing regulations, paperwork requirements, and other regulatory obligations that can be modified or repealed, consistent with law, to achieve savings of time and money while continuing to achieve CBP's statutory obligations.

DATES: Written comments and information are requested on or before December 11, 2017.

ADDRESSES: You may submit suggestions identified by docket number by submitting them to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2017–0035. All submissions received must include the agency name and docket number for this rulemaking. All suggestions received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Any member of the public may access the docket to read suggestions received.

FOR FURTHER INFORMATION CONTACT: Elena Ryan, Special Advisor, Programs and Policy Analysis, U.S. Department of Homeland Security, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE., 10th Floor, MS1177, Washington, DC 20229. Telephone: 202–325–0004. Email: *regulatoryreformsuggestion@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: On January 30, 2017, the President issued Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' That Executive Order stated that the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Executive Order also stated that it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. Toward that end, for fiscal year 2017, the Executive Order requires that:

(a) ''Unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.'' Sec. 2(a).

(b) ''For fiscal year 2017 the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by the Director of the Office of Management and Budget.'' Sec. 2(b); and

(c) ''Any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' Sec. 2(c).

Further, the Executive Order requires that for fiscal year 2018, and for each fiscal year thereafter, the head of each agency shall identify, for each regulation that increases incremental cost, offsetting regulations, and provide the agency's best approximation of the total costs or savings associated with each new regulation or repealed regulation.

Additionally, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda''. The Executive Order established a Federal policy to alleviate unnecessary regulatory burdens placed on the American people. Section 3(a) of the Executive Order directs Federal agencies to establish a Regulatory Reform Task Force (Task Force). One of the duties of the Task Force is to evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification. The Executive Order further asks that each Task Force attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

The Office of Management and Budget has directed that agency policies (such as guidance and interpretative documents) and information collections that impose costs on the public may also be identified under the above criteria, in addition to regulations.

Section 3(e) of the Executive Order calls on the Task Force to seek input and other assistance on this task, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and Tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.

Request for Suggestions

CBP is, through this document, seeking input from entities affected by CBP, including state, local, and tribal governments, small businesses, consumers, non-governmental organizations, manufacturers, and their trade associations. These entities are in

the best position to help CBP identify rules that are obsolete, unnecessary, unjustified, or simply no longer make sense, or rules that could be better modernized to accomplish their objectives.

Consistent with CBP's commitment to public participation in the rulemaking process, CBP is soliciting views from the public on specific regulations or paperwork requirements that could be altered or eliminated to reduce burdens while still allowing CBP to meet its mission.

While CBP promulgates rules in accordance with the law and to the best of its analytic capability, it is difficult to be certain of the consequences of a rule, including its costs and benefits, until it has been tested. Because knowledge about the full effects of a rule is widely dispersed in society, members of the public are likely to have useful information and perspectives on the benefits and burdens of existing requirements and how regulatory obligations may be updated, streamlined, revised, or repealed to better achieve regulatory objectives, while minimizing regulatory burdens, consistent with applicable law.

Accordingly, CBP is asking you to consider the following questions when providing your input:

(1) Are there CBP rules or reporting requirements that have become outdated and, if so, how can they be modernized to better accomplish their objective?

(2) Are there CBP rules that are still necessary, but have not operated as well as expected such that a modified, or slightly different approach at lower cost is justified?

(3) Are there CBP rules that unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the secure flow of legitimate trade and travel to and from the United States?

(4) Does CBP currently collect information that it does not need or use effectively?

(5) Are there regulations, reporting requirements, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve statutory obligations in more efficient ways?

(6) Are there rules or reporting requirements that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or do away with existing regulatory or reporting requirements?

To allow CBP to more effectively evaluate suggestions, CBP requests that commenters identify with specificity the regulation (in either Title 19 CFR Chapter I, or Title 8 CFR, Chapter I) or reporting requirement at issue, and provide the legal citation where available. Please note that certain regulations which reflect statutory requirements cannot be eliminated until the statute is amended or repealed to eliminate that requirement. CBP also requests that the submitter provide, in as much detail as possible, an explanation why a regulation or reporting requirement should be modified, streamlined, or repealed, as well as specific suggestions of ways CBP can do so while achieving its regulatory objectives. In addition, supporting data or other information, such as cost information, for any suggestions would be useful.

Comments from the public are crucial to understanding regulatory burden and helping CBP find solutions that are cost effective, facilitate legitimate trade and travel, and enhance homeland security. While CBP intends to fully consider all input received in response to this notice, CBP will not respond individually to comments and none of the comments submitted will bind CBP to take any further action.

Dated: September 6, 2017.

Mark Koumans,

Deputy Executive Assistant Commissioner, Operations Support, U.S. Customs and Border Protection.

[FR Doc. 2017–19167 Filed 9–11–17; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FA–2017–0668; Product Identifier 2017–NE–17–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all General Electric Company (GE) CF6–80A, –80A1, –80A2, and –80A3 turbofan engines. This proposed AD was prompted by high cycle fatigue (HCF) cracking of the low-pressure turbine (LPT) stage 3 nozzles. This proposed AD would require replacement of the LPT stage 3 nozzles. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 27, 2017.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, phone: 513–552–3272; fax: 513–552–3329; email: *geae.aoc@ge.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, Policy and Innovation Division, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0668; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Herman Mak, Aerospace Engineer, FAA, ECO Branch, Compliance and Airworthiness Division, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7147; fax: 781–238–7199; email: *herman.mak@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0668; Product Identifier 2017–NE–17–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory,

economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

We received a report of an LPT uncontainment on a CF6–80A2. Investigation determined the uncontainment was the result of HCF cracking of the LPT stage 3 nozzles. This condition, if not corrected, could result in failure of the LPT stage 3 nozzle, damage to the engine, and damage to the airplane.

Related Service Information

We reviewed GE CF6–80A Service Bulletin (SB) 72–0749, Revision 2, dated August 31, 2016. The SB describes procedures for replacement of the LPT stage 3 nozzles.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require replacement of the LPT stage 3 nozzles.

Costs of Compliance

We estimate that this proposed AD affects 7 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement of LPT stage 3 nozzles	0 work-hours × $85 per hour = $0	$368,260	$368,260	$2,577,820

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2017–0668; Product Identifier 2017–NE–17–AD.

(a) Comments Due Date

We must receive comments by October 27, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric (GE) CF6–80A, –80A1, –80A2, and –80A3 turbofan engines with low-pressure turbine (LPT) stage 3 nozzles, part number (P/N) 9290M52P05 and 9290M52P06, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by high cycle fatigue (HCF) cracking of the LPT stage 3 nozzles resulting in LPT uncontainment. We are issuing this AD to prevent cracking of the LPT stage 3 nozzles. The unsafe condition, if not corrected, could result LPT uncontainment, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Within 36 months after the effective date of this AD, replace LPT stage 3 nozzles, P/N 9290M52P05 and 9290M52P06, with a part eligible for installation.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, FAA, ECO Branch, Compliance and Airworthiness Division, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ECO Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

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

(i) Related Information

(1) For more information about this AD, contact Herman Mak, Aerospace Engineer, FAA, ECO Branch, Compliance and Airworthiness Division, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7147; fax: 781–238–7199; email: *herman.mak@faa.gov.*

(2) GE CF6–80A Service Bulletin 72–0749, Revision 2, dated August 31, 2016; can be obtained from GE using the contact information in paragraph (i)(3) of this AD.

(3) For service information identified in this proposed AD, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, phone: 513–552–3272; fax: 513–552–3329; email: *geae.aoc@ge.com.*

(4) You may view this service information at the FAA, Engine and Propeller Standards Branch, Policy and Innovation Division, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on September 6, 2017.

Robert J. Ganley,

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

[FR Doc. 2017–19250 Filed 9–11–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–473]

Schedules of Controlled Substances: Temporary Placement of Ortho-Fluorofentanyl, Tetrahydrofuranyl Fentanyl, and Methoxyacetyl Fentanyl Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Proposed amendment; notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this notice of intent to publish a temporary order to schedule the synthetic opioids, *N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide (*ortho*-fluorofentanyl or 2-fluorofentanyl), *N*-(1-phenethylpiperidin-4-yl)-*N*-phenyltetrahydrofuran-2-carboxamide (tetrahydrofuranyl fentanyl), and 2-methoxy-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide (methoxyacetyl fentanyl), into Schedule I. This action is based on a finding by the Administrator that the placement of these synthetic opioids into Schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. When it is issued, the temporary scheduling order will impose the administrative, civil, and criminal sanctions and regulatory controls applicable to Schedule I controlled substances under the Controlled Substances Act on the manufacture, distribution, reverse distribution, possession, importation, exportation, research, and conduct of instructional activities, and chemical analysis of these synthetic opioids.

DATES: September 12, 2017.

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

SUPPLEMENTARY INFORMATION: This notice of intent contained in this document is issued pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The Drug Enforcement Administration (DEA) intends to issue a temporary scheduling order (in the form of a temporary amendment) to add *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl to Schedule I under the Controlled Substances Act.[1] The temporary scheduling order will be published in the **Federal Register**, but will not be issued before October 12, 2017.

Legal Authority

Section 201 of the Controlled Substances Act (CSA), 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into Schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

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

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance into Schedule I of the CSA.[2] The Administrator transmitted notice of his intent to place *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl in Schedule I on a temporary basis to the Assistant Secretary for Health of HHS by letter. Notice for these actions was transmitted on the following dates: May 19, 2017 (*ortho*-fluorofentanyl) and July 5, 2017 (tetrahydrofuranyl fentanyl and methoxyacetyl fentanyl). The Assistant Secretary responded by letter dated June 9, 2017 (*ortho*-fluorofentanyl) and July 14, 2017 (tetrahydrofuranyl fentanyl and methoxyacetyl fentanyl), and advised that based on a review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications or approved new drug applications for *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, or methoxyacetyl fentanyl. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl into Schedule I of the CSA. *ortho*-Fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl are not

[1] Though DEA has used the term ''final order'' with respect to temporary scheduling orders in the past, this notice of intent adheres to the statutory language of 21 U.S.C. 811(h), which refers to a ''temporary scheduling order.'' No substantive change is intended.

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

currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, or methoxyacetyl fentanyl under section 505 of the FDCA, 21 U.S.C. 355.

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

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

Ortho-Fluorofentanyl, Tetrahydrofuranyl Fentanyl, and Methoxyacetyl Fentanyl

The recent identification of *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl in drug evidence and the identification of these substances in association with fatal overdose events indicate that these substances are being abused for their opioid properties. No approved medical use has been identified for *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, or methoxyacetyl fentanyl, nor have they been approved by the FDA for human consumption.

Available data and information for *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl, summarized below, indicate that these synthetic opioids have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. The DEA's three-factor analysis is available in its entirety under ''Supporting and Related Material'' of the public docket for this action at *www.regulations.gov* under Docket Number DEA–473.

Factor 4. History and Current Pattern of Abuse

The recreational abuse of fentanyl-like substances continues to be a significant concern. These substances are distributed to users, often with unpredictable outcomes. *ortho*-Fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl have recently been encountered by law enforcement and public health officials. Adverse health effects and outcomes are demonstrated by fatal overdose cases involving these substances. The documented negative effects of *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl are consistent with those of other opioids.

On October 1, 2014, the DEA implemented STARLiMS (a web-based, commercial laboratory information management system) to replace the System to Retrieve Information from Drug Evidence (STRIDE) as its laboratory drug evidence data system of record. DEA laboratory data submitted after September 30, 2014, are reposited in STARLiMS. Data from STRIDE and STARLiMS were queried on June 19, 2017. STARLiMS registered four reports containing *ortho*-fluorofentanyl from California and five reports containing tetrahydrofuranyl fentanyl from Florida and Missouri. According to STARLiMS, the first laboratory submissions of *ortho*-fluorofentanyl and tetrahydrofuranyl fentanyl occurred in April 2016, and March 2017, respectively.

The National Forensic Laboratory Information System (NFLIS) is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by other federal, state, and local forensic laboratories across the country. Data from NFLIS was queried on June 20, 2017. NFLIS registered three reports containing *ortho*-fluorofentanyl from state or local forensic laboratories in Virginia.[3] According to NFLIS, the first report of *ortho*-fluorofentanyl was reported in September 2016. NFLIS registered two reports containing tetrahydrofuranyl fentanyl from state or local forensic laboratories in New Jersey and was first reported in January 2017. The identification of methoxyacetyl fentanyl in drug evidence submitted in April 2017 was reported to DEA from a local laboratory in Ohio.[4] The DEA is not aware of any laboratory identifications of *ortho*-fluorofentanyl prior to 2016 or identifications of tetrahydrofuranyl fentanyl or methoxyacetyl fentanyl prior to 2017.

Evidence suggests that the pattern of abuse of fentanyl analogues, including *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl, parallels that of heroin and prescription opioid analgesics. Seizures of *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl have been encountered in powder form similar to fentanyl and heroin and have been connected to fatal overdoses.

Factor 5. Scope, Duration and Significance of Abuse

Reports collected by the DEA demonstrate *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl are being abused for their opioid properties. Abuse of *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl have resulted in mortality (*see* DEA 3-Factor Analysis for full discussion). The DEA collected post-mortem toxicology and medical examiner reports on 13 confirmed fatalities associated with *ortho*-fluorofentanyl which occurred in Georgia (1), North Carolina (11), and Texas (1), two confirmed fatalities associated with tetrahydrofuranyl fentanyl which occurred in New Jersey (1) and Wisconsin (1), and 2 confirmed fatalities associated with methoxyacetyl fentanyl which occurred in Pennsylvania. It is likely that the prevalence of these substances in opioid related emergency room admissions and deaths is underreported as standard immunoassays may not differentiate fentanyl analogues from fentanyl.

Ortho-Fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl have been identified in drug evidence collected by law enforcement. NFLIS and STARLiMS have a total of seven drug reports in which *ortho*-fluorofentanyl was identified in drug exhibits submitted to forensic laboratories in 2016 from law enforcement encounters in California and Virginia and seven drug reports in which tetrahydrofuranyl fentanyl was identified in drug exhibits submitted to forensic laboratories in 2017 from law enforcement encounters in Florida, Missouri, and New Jersey. The identification of methoxyacetyl fentanyl in drug evidence submitted in April 2017 was reported to DEA from Ohio.

The population likely to abuse *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl overlaps with the population abusing prescription opioid analgesics, heroin, fentanyl, and other fentanyl-related substances. This is evidenced by the

[3] Data are still being collected for March 2017–June 2017 due to the normal lag period for labs reporting to NFLIS.

[4] Email from Cuyahoga County Medical Examiner's Office, to DEA (May 8, 2017 02:29 p.m. EST) (on file with DEA).

routes of drug administration and drug use history documented in *ortho*-fluorofentanyl and tetrahydrofuranyl fentanyl fatal overdose cases. Because abusers of *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl are likely to obtain these substances through unregulated sources, the identity, purity, and quantity are uncertain and inconsistent, thus posing significant adverse health risks to the end user. Individuals who initiate (*i.e.,* use a drug for the first time) *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, or methoxyacetyl fentanyl abuse are likely to be at risk of developing substance use disorder, overdose, and death similar to that of other opioid analgesics (*e.g.,* fentanyl, morphine, etc.).

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

Ortho-Fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl exhibit pharmacological profiles similar to that of fentanyl and other μ-opioid receptor agonists. The toxic effects of *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl in humans are demonstrated by overdose fatalities involving these substances. Abusers of *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl may not know the origin, identity, or purity of these substances, thus posing significant adverse health risks when compared to abuse of pharmaceutical preparations of opioid analgesics, such as morphine and oxycodone.

Based on information received by the DEA, the misuse and abuse of *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl lead to the same qualitative public health risks as heroin, fentanyl and other opioid analgesic substances. As with any non-medically approved opioid, the health and safety risks for users are high. The public health risks attendant to the abuse of heroin and opioid analgesics are well established and have resulted in large numbers of drug treatment admissions, emergency department visits, and fatal overdoses.

Ortho-Fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl have been associated with numerous fatalities. At least 13 confirmed overdose deaths involving *ortho*-fluorofentanyl abuse have been reported from Georgia (1), North Carolina (11), and Texas (1). At least two confirmed overdose deaths involving tetrahydrofuranyl fentanyl have been repored from New Jersey (1) and Wisconsin (1). At least two confirmed overdose deaths involving methoxyacetyl fentanyl have been reported from Pennsylvania. As the data demonstrates, the potential for fatal and non-fatal overdoses exists for *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl and these substances pose an imminent hazard to the public safety.

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

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information, summarized above, the continued uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl pose an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, or methoxyacetyl fentanyl in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in Schedule I. Substances in Schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl indicate that these substances have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Administrator, through letters dated May 19, 2017 (*ortho*-fluorofentanyl) and July 5, 2017 (tetrahydrofuranyl fentanyl and methoxyacetyl fentanyl), notified the Assistant Secretary of the DEA's intention to temporarily place these substances in Schedule I.

Conclusion

This notice of intent provides the 30-day notice pursuant to section 201(h)(1) of the CSA, 21 U.S.C. 811(h)(1), of DEA's intent to issue a temporary scheduling order. In accordance with the provisions of section 201(h)(3) of the CSA, 21 U.S.C. 811(h)(3), the Administrator considered available data and information, herein set forth the grounds for his determination that it is necessary to temporarily schedule *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl in Schedule I of the CSA, and finds that placement of these synthetic opioids into Schedule I of the CSA is necessary in order to avoid an imminent hazard to the public safety.

The temporary placement of *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl into Schedule I of the CSA will take effect pursuant to a temporary scheduling order, which will not be issued before October 12, 2017. Because the Administrator hereby finds that it is necessary to temporarily place *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl into Schedule I to avoid an imminent hazard to the public safety, the temporary order scheduling these substances will be effective on the date that order is published in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2). It is the intention of the Administrator to issue a temporary scheduling order as soon as possible after the expiration of 30 days from the date of publication of this document. Upon publication of the temporary order, *ortho*-fluorofentanyl, tetrahydrofuranyl fentanyl, and methoxyacetyl fentanyl will then be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, research, conduct of instructional activities and chemical analysis, and possession of a Schedule I controlled substance.

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

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for a temporary scheduling action where such action is

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

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

Although the DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice and comment requirements of section 553 of the APA, the DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Administrator took into consideration comments submitted by the Assistant Secretary in response to notice that DEA transmitted to the Assistant Secretary pursuant to section 811(h)(4).

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

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

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

List of Subjects in 21 CFR Part 1308

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

For the reasons set out above, the DEA hereby provides notice of its intent to temporarily amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

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

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

■ 2. In § 1308.11, add paragraphs (h)(19) through (21) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(19) *N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other names: *ortho*-fluorofentanyl, 2-fluorofentanyl)—(9816)

(20) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenyltetrahydrofuran-2-carboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other name: tetrahydrofuranyl fentanyl)—(9843)

(21) 2-methoxy-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other name: methoxyacetyl fentanyl)—(9825)

Dated: August 26, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–19283 Filed 9–11–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

[Docket No. MSHA–2014–0030]

RIN 1219–AB87

Examinations of Working Places in Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule, limited reopening of the rulemaking record; notice of public hearings; close of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) proposes to amend the Agency's final rule on examinations of working places in metal and nonmetal mines that was published in January 2017. The proposed changes would require that an examination of the working place be conducted before work begins or as miners begin work in that place, and that the examination record include descriptions of adverse conditions that are not corrected promptly and the dates of corrective action for these conditions. The proposed rule would provide mine operators additional flexibility in managing their safety and health programs and reduce regulatory burdens without reducing the protections afforded miners.

DATES: MSHA is reopening the comment period to solicit comments on limited changes to the final rule published on January 23, 2017 (82 FR 7695), effective May 23, 2017, and delayed on May 22, 2017 (82 FR 23139), until October 2, 2017 (82 FR 23139).

Comment date: Comments must be received or postmarked by midnight Eastern Standard Time (EST) on November 13, 2017.

Hearing dates: October 24, 2017, October 26, 2017, October 31, 2017, and November 2, 2017. The locations are listed in the Public Hearings section in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Submit comments and informational materials, identified by RIN 1219–AB87 or Docket No. MSHA–2014–0030, by one of the following methods:

- *Federal E-Rulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: zzMSHA-comments@dol.gov.*
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 201 12th

Street South, Suite 4E401, Arlington, Virginia 22202–5452.

• *Hand Delivery or Courier:* 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th floor East, Suite 4E401.

• *Fax:* 202–693–9441.

Information Collection Requirements: Comments concerning the information collection requirements of this proposed rule must be clearly identified with RIN 1219–AB87 or Docket No. MSHA–2014–0030, and sent to both MSHA and the Office of Management and Budget (OMB). Comments to MSHA may be sent by one of the methods in the **ADDRESSES** section above. Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for MSHA, or via email *oira_submissions@omb.eop.gov.*

Instructions: All submissions must include RIN 1219–AB87 or Docket No. MSHA–2014–0030. Do not include personal information that you do not want publicly disclosed; MSHA will post all comments without change, including any personal information provided.

Docket: For access to the docket to read comments received, go to *https://www.regulations.gov* or *https://www.msha.gov/currentcomments.asp.* To read background documents, go to *https://www.regulations.gov.* Review the docket in person at MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, Virginia, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th floor East, Suite 4E401.

Email Notification: To subscribe to receive email notification when MSHA publishes rulemaking documents in the **Federal Register**, go to *https://www.msha.gov/subscriptions.*

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email), 202–693–9440 (voice), or 202–693–9441 (fax). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

A. Public Hearings

MSHA will hold four public hearings on the proposed rule to provide the public with an opportunity to present oral statements, written comments, and other information on this rulemaking. The public hearings will begin at 9 a.m. and end after the last presenter speaks, and in any event not later than 5 p.m., on the following dates at the locations indicated:

Date/time	Location	Contact No.
October 24, 2017, 9 a.m	Mine Safety and Health Administration Headquarters, 201 12th Street South, 7 West Conference Rooms, Arlington, VA.	(202) 693–9440
October 26, 2017, 9 a.m	75 South West Temple, Salt Lake City, UT 84101	(801) 531–0800
October 31, 2017, 9 a.m	Sheraton Birmingham Hotel, 2101 Richard Arrington Jr. Boulevard North, Birmingham, AL 35203.	(205) 324–5000
November 2, 2017, 9 a.m	Wyndham Pittsburgh University Center, 100 Lytton Ave., Pittsburgh, PA 15213	(412) 682–6200

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. Speakers and other attendees may present information to MSHA for inclusion in the rulemaking record. The hearings will be conducted in an informal manner. Formal rules of evidence or cross examination will not apply.

A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcript will be available to the public. The transcript may also be viewed on MSHA's Web site at *https://arlweb.msha.gov/currentcomments.asp,* under Comments on Public Rule Making.

B. Regulatory History

On January 23, 2017, MSHA published a final rule, Examinations of Working Places in Metal and Nonmetal Mines (''2017 rule'') in the **Federal Register** (FR) amending the Agency's standards for the examination of working places in metal and nonmetal mines. 82 FR 7680. The 2017 rule was scheduled to become effective on May 23, 2017. On March 27, 2017, MSHA published a proposed rule to delay the effective date of the 2017 rule to July 24, 2017. 82 FR 15173. On May 22, 2017, MSHA published a final rule delaying the effective date of the 2017 rule until October 2, 2017. 82 FR 23139. Elsewhere in this issue of the **Federal Register**, MSHA is publishing a document taking comments on delaying the effective date of the final rule.

II. Discussion of Issues

A. Introduction

Effective working place examinations are a fundamental accident prevention tool used by operators of metal and nonmetal (MNM) mines; they allow operators to find and fix adverse conditions and violations of health and safety standards before they cause injury or death to miners.

After further review of the rulemaking record, MSHA is considering limited changes to the 2017 rule to address: (1) When working place examinations must begin, and (2) the adverse conditions and related corrective actions that must be included in the working place examinations record. Specifically, MSHA is proposing to amend the introductory text of §§ 56.18002(a) and 57.18002(a) in the 2017 rule on when examinations must begin, and the record requirements in paragraphs (b) and (c); MSHA is not proposing to modify paragraphs (a)(1) and (2) regarding miner notification and corrective action requirements. Further, MSHA is not proposing to change the record retention requirements or the record availability requirements included in the 2017 rule.

The Agency believes that the proposed changes would be as protective as the existing rules. Also, the proposal would reduce the regulatory burden on mine operators compared to requirements in the 2017 rule and would be consistent with the Administration's initiatives to reduce and control regulatory costs.

B. Before Work Begins or as Miners Begin Work

The standards for examinations of working places in MNM mines at 30 CFR 56.18002 and 57.18002 were promulgated in 1979 and are the standards currently in effect. The currently effective standards permit the examination to be made at any time during the shift. Sections 56.18002(a) and 57.18002(a) require a competent person designated by the mine operator to examine each working place at least once each shift for conditions that may

adversely affect safety or health. In addition, §§ 56.18002(a) and 57.18002(a) require the operator to promptly initiate appropriate action to correct such conditions.

On January 23, 2017, MSHA published a final rule (82 FR 7680) that amended §§ 56.18002(a) and 57.18002(a) to require that the examination be conducted before miners begin work in that place so that conditions that may adversely affect miners' safety and health are identified before miners are exposed to those conditions and corrective action is promptly initiated.

MSHA is now proposing to modify the introductory text of §§ 56.18002(a) and 57.18002(a) in the 2017 rule to require the competent person to examine each working place at least once each shift before work begins or as miners begin work in that place for conditions that may adversely affect safety or health. This proposed change to §§ 56.18002(a) and 57.18002(a) would allow the competent person to conduct the examination before work begins or as miners begin their work in a place. To provide mine operators flexibility on scheduling working place examinations, MSHA's proposed change would allow miners to enter a working place at the same time that the competent person conducts the examination. As in the 2017 rule, MSHA's proposal would not require a specific time frame for the examination to be conducted. However, MSHA intends that the examination should be conducted in a time frame sufficient to assure any adverse conditions would be identified before miners are exposed. Under the proposal, the competent person would identify adverse conditions that can be corrected promptly, and promptly notify miners of those that cannot be corrected before miners are exposed. In that way, miners could avoid and not be exposed to those adverse conditions. The operator would still be responsible for correcting those conditions that can be corrected promptly. MSHA recognizes that mining is dynamic, conditions are always changing, and adverse conditions need to be identified and addressed throughout the shift, not just at the beginning. If adverse conditions are identified, miners should be notified before being exposed, or as soon as possible after work begins if the condition is discovered while they are working in an area.

MSHA believes this proposed change would be more protective than the standards in effect, which allow the examination to be made at any time during the shift. Also, under this proposal, since MSHA expects adverse conditions would be identified before miners are potentially exposed to them, the proposal is as protective as the 2017 rule.

Furthermore, in the 2017 rule, MSHA acknowledged that for mines with consecutive shifts or those that operate on a 24-hour, 365-day basis, it may be appropriate to conduct the examination for the next shift at the end of the previous shift. 82 FR 7683. The proposed change would continue to permit mine operators to conduct an examination on the previous shift. However, as MSHA stated in the 2017 rule, because conditions at mines can change, operators should examine at a time sufficiently close to the start of the next shift to minimize potential exposure to conditions that may adversely affect miners' safety or health.

C. Record of Adverse Conditions

The currently effective standards at §§ 56.18002(b) and 57.18002(b) require, in part, that mine operators make a record that the working place examinations were conducted.

Under the 2017 rule, §§ 56.18002(b) and 57.18002(b) require operators to make a record of the working place examination and include, among other information, a description of each condition found that may adversely affect the safety or health of miners. In the preamble to the 2017 rule, MSHA noted that the record must include a description of adverse conditions that are corrected immediately. 82 FR 7686. The preamble explained that recording all adverse conditions, even those that are corrected immediately, would be useful in identifying trends and areas that could benefit from an increased safety emphasis.

However, MSHA recognizes that it is the mine operator who is responsible for design of the mine's safety program and that having a recording exception for conditions that are corrected promptly would provide operators with increased incentives to correct these conditions promptly, which may improve miner safety and health. For this reason, MSHA is considering modifying §§ 56.18002(b) and 57.18002(b) to require that the examination record include only those adverse conditions that are not corrected promptly.

MSHA also is considering a conforming change to modify §§ 56.18002(c) and 57.18002(c) of the 2017 rule, which requires the examination record to include, or be supplemented to include, the date of corrective action when any condition that may adversely affect safety or health is corrected. To be consistent with MSHA's proposed change to §§ 56.18002(b) and 57.18002(b), MSHA would require in §§ 56.18002(c) and 57.18002(c) that the record include, or be supplemented to include, the date of corrective action for an adverse condition that is not promptly corrected.

MSHA's proposal is based on the recognition that, consistent with industry best practices, prudent operators routinely correct many adverse conditions as the competent person is making the examination or as soon as possible after the completion of the examination, and that the corrective action may be taken either by the competent person or someone else. The Agency believes that the primary concern should be with respect to those adverse conditions that are not corrected promptly because they may expose miners to conditions that may potentially cause an accident, injury, or fatality. Consistent with the explanation in the preamble to the 2017 rule, MSHA interprets ''promptly'' to mean before miners are potentially exposed to adverse conditions.

Also, the proposed change to §§ 56.18002(b) and 57.18002(b) would be consistent with MSHA's miner notification provisions under the 2017 rule at §§ 56.18002(a)(1) and 57.18002(a)(1). Those provisions require mine operators to promptly notify miners in affected areas of any conditions found that may adversely affect their safety or health. In the preamble to the 2017 rule, MSHA reiterated that, if an adverse condition is corrected before miners begin work, notification to miners in affected areas is not required because there are no miners that would be affected by the adverse condition. Similarly, under proposed paragraph (b), adverse conditions that are corrected promptly no longer present a danger to miners and a description of the adverse condition would not be required as part of the examination record under this proposed rule. MSHA believes that this change to §§ 56.18002(b) and 57.18002(b) may improve safety over the existing standards by encouraging mine operators to correct adverse conditions as they are found before they potentially cause an accident, injury, or fatality.

Overall, MSHA believes that the proposed rule would be more protective of miners than the existing standards under §§ 56.18002 and 57.18002. The proposed rule encourages early identification and prompt correction of adverse conditions to protect miners. If corrected promptly, adverse conditions would not be required to be documented in the record. However, adverse conditions that are not

corrected promptly would be required to be documented in the record. An examination record with a description of these uncorrected adverse conditions and their dates of correction would permit mine operators to focus on conditions that need the most attention and on best practices to correct these conditions.

III. Request for Comments

MSHA is soliciting comments only on the limited changes being proposed: (1) Working place examinations may begin as miners begin work, and (2) adverse conditions that are not corrected promptly and dates of their corrective action must be included in the working place examinations record. The Agency requests that commenters be as specific as possible and include any alternatives, existing practices and experiences, detailed rationales, supporting documentation, and benefits to miners. Comments will assist the Agency in considering changes to the 2017 rule and whether changes would reduce regulatory burdens on mine operators without reducing the protections afforded miners.

IV. Executive Order 12866: Regulatory Planning and Review; Executive Order 13563: Improving Regulation and Regulatory Review; and Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

Executive Orders (E.O.) 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 13771 directs agencies to reduce regulation and control regulatory costs by eliminating at least two existing regulations for each new regulation, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. This proposed rule is expected to be an EO 13771 deregulatory action. As discussed in this section, MSHA estimates that this proposed rule would result in annual cost savings of $27.6 million.[1]

Under E.O. 12866, it must be determined whether a regulatory action is ''significant'' and subject to review by OMB. Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this E.O.

Based on its assessment of the costs and benefits, MSHA has determined that this proposed rule would not have an annual effect of $100 million or more on the economy and, therefore, would not be an economically significant regulatory action pursuant to section 3(f) of E.O. 12866. MSHA requests comments on all cost and benefit estimates presented in this preamble and on the data and assumptions the Agency used to develop estimates. This proposed rule would make changes to provisions that created costs in the 2017 rule, as described in the following sections.

A. Compliance Cost Baseline

MSHA estimated that the 2017 rule will result in $34.5 million in annual costs for the MNM industry. The Agency estimated that the total undiscounted cost of the final rule over 10 years will be $345.1 million; at a 3 percent discount rate, $294.4 million; and at a 7 percent discount rate, $242.4 million. In the final rule, MSHA estimated costs associated with conducting an examination before work begins, the additional time to make a record, and providing miners' representatives a copy of the record.

In this proposed rule, MSHA estimates the costs of changes to the 2017 rule that include: (1) An examination of a working place as miners begin work in that place, and (2) the time used to make a record only of adverse conditions that are not corrected promptly and the dates of corrective action for these conditions. For purposes of calculating the costs attributable to this proposed rule, MSHA updated the number of mines and used calendar year 2016 wage and employment data. MSHA also applied 2016 wage and employment data to the 2017 rule to establish a baseline to calculate cost savings.

B. Affected Employees and Revenue Estimates

The proposed rule would apply to all MNM mines in the United States. The baseline for costs and net benefits include costs identified in the preamble to the 2017 rule. The changes include updates to the 2016 data on wages, number of mines, and employment. Changes to the baseline that would exist without this proposed rule are not attributable to this proposal. The updates are included for purposes of calculating the cost savings attributable to this proposed rule.

In 2016, there were approximately 11,624 MNM mines employing 140,631 miners, excluding office workers, and 69,004 contractors working at MNM mines. Table 1 presents the number of MNM mines and employment by mine size.

TABLE 1—MNM MINES AND EMPLOYMENT IN 2016

Mine size	Number of mines	Total employment at mines, excluding office workers
1–19 Employees	10,428	52,703
20–500 Employees	1,174	71,257
501+ Employees	22	16,671
Contractors	.....	69,004

[1] Except where noted, the analysis presents all dollar values using 2016 dollars.

TABLE 1—MNM MINES AND EMPLOYMENT IN 2016—Continued

Mine size	Number of mines	Total employment at mines, excluding office workers
Total	11,624	209,635

Source: MSHA MSIS Data (reported on MSHA Form 7000–2) June 6, 2017.

The U.S. Department of the Interior (DOI) estimated the value of the U.S. mining industry's MNM output in 2016 to be $74.6 billion.[2] Table 2 presents the hours worked and revenue produced at MNM mines by mine size.

TABLE 2—MNM TOTAL HOURS AND REVENUES IN 2016

Mine size	Total hours reported for year	Revenue (in millions of dollars)
1–19 Employees	89,901,269	$22,294
20–500 Employees	153,459,578	40,920
501+ Employees	35,396,747	11,390
Total	278,757,594	74,604

Source: MSHA MSIS Data (total hours worked at MNM mines reported on MSHA Form 7000–2) and estimated DOI reported mine revenues for 2016. MSHA distributed the totals to mine size using employment and hours data.

C. Benefits

The proposed rule would modify the 2017 rule's requirements in §§ 56.18002(a) and 57.18002(a) that require the examination be conducted before miners begin work in that place. MSHA is proposing to modify these provisions to require the examination be conducted before work begins or as miners begin work in that place. This proposed change would reduce the cost of the 2017 rule. MSHA is also proposing to modify the 2017 rule's requirements in §§ 56.18001(b) and 57.18002(b) that the examination record include each adverse condition found. MSHA is proposing to modify these provisions to require that the examination record include only those adverse conditions that are not corrected promptly.

MSHA believes these changes to the 2017 rule would not reduce the protections afforded miners; therefore, benefits would remain unchanged, which were unquantified in the 2017 rule, since MSHA was unable to separate the benefits of the new requirements under the 2017 rule from those benefits attributable to conducting a workplace examination under the existing standard. Thus, net benefits for this proposed rule would be positive due to the cost savings.

D. Compliance Costs

The costs of this proposed rule are associated with conducting examinations of a working place as miners begin work in that place. In the preamble to the 2017 rule, MSHA concluded that MNM mine operators will use a variety of scheduling methods to conduct an examination of a working place before miners begin work (82 FR 7690). For the 2017 rule, MSHA estimated that it will cost approximately $26.9 million for mine operators examine each working place before miners begin work.

For the 2017 rule estimate, MSHA assumed that operators might use overtime, use different people to backfill for the time shifted to the examination, or experience rescheduling costs to comply with the final rule. The examination was already required prior to the 2017 rule and therefore not an additional cost for either the 2017 rule or this proposed rule. Under this proposed rule, mine operators would not be required to make the 2017 rule changes to the examination timing that were estimated to add $26.9 million for overtime, backfill, and rescheduling. The proposed change in the examination timing would allow mine operators to avoid the additional $26.9 million and therefore create a cost savings. MSHA requests comment on this estimate. MSHA updated the cost estimate for the number of mines and labor costs which results in an estimated annual cost savings of $27.6 million.

The 2017 rule also amended the standards currently in effect by specifying the contents of the examination record, which included a requirement that a record include a description of each adverse condition found. Under this proposed rule, MSHA would modify the required contents of the examination record by requiring a description of each adverse condition that is not corrected promptly. MSHA assumes that the cost related to the proposed change to the recordkeeping requirements would be de minimis. MSHA seeks comment on the Agency's assumption and solicits information and data on the number of instances adverse conditions are promptly corrected and on average how much time would be saved by not requiring these corrected conditions to be included in the record.

MSHA updated the number of mines and applied 2016 wage and employment data to the 2017 rule to establish a baseline to calculate cost savings. MSHA estimates that the competent person making the record of the examination of working places would earn $35.28 per hour (including benefits). In addition, the estimated wage rate of a clerical worker who makes a copy of the record is $24.44 per hour (including benefits). The wage rates are from the Bureau of Labor

[2] Revenue estimates are from DOI, U.S. Geological Survey (USGS), Mineral Commodity Summaries 2017, January 2017, page 9.

Statistics (BLS), Occupation Employment Statistics (OES) May 2016 survey.[3] [4] Updating the 2017 rule's costs results in a new examination cost base of $27.6 million annually or approximately a $0.7 million increase. MSHA also restates the 2017 rule estimates that—

- Mines with 1–19 employees operate 1.1 shift per day, 169 days per year;
- Mines with 20–500 employees operate 1.8 shifts per day, 285 days per year; and
- Mines with 500+ employees operate 2.2 shifts per day, 322 days per year.

Overhead Costs

MSHA notes that the Agency did not include an overhead labor cost in the economic analysis for this proposed rule. It is important to note that there is not one broadly accepted overhead rate and that the use of overhead to estimate the marginal costs of labor raises a number of issues that should be addressed before applying overhead costs to analyze the costs of any specific regulation. There are several approaches to look at the cost elements that fit the definition of *overhead* and there are a range of overhead estimates currently used within the federal government—for example, the Environmental Protection Agency has used 17 percent,[5] and the Employee Benefits Security Administration has used 132 percent on average.[6] Some overhead costs, such as advertising and marketing, may be more closely correlated with output rather than with labor. Other overhead costs vary with the number of new employees. For example, rent or payroll processing costs may change little with the addition of 1 employee in a 500-employee firm, but those costs may change substantially with the addition of 100 employees. If an employer is able to rearrange current employees' duties to implement a rule, then the marginal share of overhead costs such as rent, insurance, and major office equipment (*e.g.,* computers, printers, copiers) would be very difficult to measure with accuracy (*e.g.,* computer use costs associated with 2 hours for rule familiarization by an existing employee). For this proposed rule, comparability is also a problem. The January 2017 rule is not in effect and therefore additional overhead costs have not been incurred and are unlikely to be incurred in the short term. Guidance on implementing Executive Order 13371[7] also provides general guidance that applies in this situation:

> For E.O. 13771 deregulatory actions that revise or repeal recently issued rules, agencies generally should not estimate cost savings that exceed the costs previously projected for the relevant requirements, unless credible new evidence show that costs were previously underestimated.

If MSHA had included an overhead rate when estimating the marginal cost of labor, without further analyzing an appropriate quantitative adjustment, and adopted for these purposes an overhead rate of 17 percent on base wages, the overhead costs would increase cost savings from $27.6 million to $32.3 million at all discount rates. This increase in savings of $4.7 million is the same 17 percent overhead rate as all rule costs are labor costs and therefore change in direct proportion to the rates selected.

MSHA will continue to study overhead costs to ensure regulatory costs are appropriately attributed without double counting or showing savings for concepts not previously considered as costs.

Discounting

Discounting is a technique used to apply the economic concept that the preference for the value of money decreases over time. In this analysis, MSHA provides cost totals at zero, 3, and 7 percent discount rates. The zero percent discount rate is referred to as the undiscounted rate. MSHA used the Excel Net Present Value (NPV) function to determine the present value of costs and computed an annualized cost from the present value using the Excel PMT function.[8] The negative value of the PMT function provides the annualized cost over 10 years at a 3 and 7 percent discount rate using the function's end of period option.

Summary of Cost Savings

The following table shows the published 2017 rule costs, changes due to updating the base, and the resulting proposed rule cost savings (cost reductions have a negative sign and are a cost savings).

TABLE 3—UNDISCOUNTED COSTS, CHANGES, AND REGULATORY SAVINGS

[Annual values, $ millions]

	Recordkeeping	Examination timing	Total (may not sum due to rounding)
Costs as published in 2017 rule (published using 2015 dollars)	7.64	26.88	34.51
Changes due to updated 2016 baseline data	0.24	0.72	0.95
Total 2016 baseline	7.88	27.60	35.47

[3] OES data are available at *http://www.bls.gov/oes/tables.htm* or at *http://www.bls.gov/oes/oes_ques.htm.* The employment-weighted mean wage rates are for Extraction Workers (Standard Occupational Classification code, SOC, 47–500) and General Office Clerks (Standard Occupational Classification code, SOC, 43–9061) for Metal Ore Mining (NAICS 212200) and Nonmetallic Mineral Mining and Quarrying (NAICS 212300). The OES wages represent the average for the entire industry and are used nationally for many federal estimates and programs. As with any average, there are always examples of higher and lower values, but the national average is the appropriate value for a rule that regulates an entire industry.

[4] The wage rate without benefits was increased for a benefit-scalar of 1.48. The benefit-scalar comes from BLS Employer Costs for Employee Compensation access by menu *http://www.bls.gov/data/* or directly with *http://data.bls.gov/timeseries/CIU2010000405000I.* The data series CIU201000040500I, Private Industry Total benefits for Construction, extraction, farming, fishing, and forestry occupations, is divided by 100 to convert to a decimal value. MSHA used the latest 4-quarter moving average 2016 Qtr. 1—2016 Qtr. 4 to determine that 32.5 percent of total loaded wages are benefits. The scaling factor is a detailed calculation, but may be approximated with the formula and values 1 + (benefit percentage/(1 − benefit percentage)) = 1 + (0.325/(1–0.325)) = 1.48. Additionally, wage inflation is applied. Wage inflation is the change in Series ID: CIS20200004050001; Seasonally adjusted; Series Title: Wages and salaries for Private industry workers in Construction, extraction, farming, fishing, and forestry occupations, Index. (Qtr. 4 2016/Qtr. 2 2016 = 126.7/125.5 = 1.01).

[5] U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' June 10, 2002.

[6] For a further example of overhead cost estimates, please see the Employee Benefits Security Administration's guidance at *https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-august-2016.pdf.*

[7] Memorandum: Implementing Executive Order 13771, Titled ''Reducing Regulation and Controlling Regulatory Costs, M–17–21'', April 5, 2017, Question 21, *https://www.whitehouse.gov/the-press-office/2017/04/05/memorandum-implementing-executive-order-13771-titled-reducing-regulation.*

[8] Office of Management and Budget, Office of Information and Regulatory Affairs, Regulatory Impact Analysis: Frequently Asked Questions, February 7, 2011.

TABLE 3—UNDISCOUNTED COSTS, CHANGES, AND REGULATORY SAVINGS—Continued

[Annual values, $ millions]

	Recordkeeping	Examination timing	Total (may not sum due to rounding)
Regulatory savings of proposed rule (change from updated base, negative values = cost savings)	0.00	−27.60	−27.60

MSHA estimates that the total undiscounted costs of the proposed rule over a 10-year period would be approximately −$276 million, −$235.4 million at a 3 percent rate, and −$193.8 million at a 7 percent rate. Negative cost values are cost savings that result in a positive net benefit. The same annual cost savings occurs in each of the 10 years so the cost annualized over 10 years would be approximately −$27.60 million for all discount rates.

V. Feasibility

A. Technological Feasibility

The proposed rule contains recordkeeping requirements and is not technology-forcing. MSHA concludes that the proposed rule would be technologically feasible.

B. Economic Feasibility

MSHA established the economic feasibility of the 2017 rule using its traditional revenue screening test—whether the yearly impacts of a regulation are less than one percent of revenues—to establish presumptively that the 2017 rule was economically feasible for the mining community. This proposed rule creates a cost (savings) of −$27.6 million annually compared to the 2017 rule. Although the associated revenues decreased slightly from the 2017 rule estimate of $77.6 billion in 2015 to approximately $74.6 billion for 2016, the costs retained from the 2017 rule of approximately $7.9 million per year remains well less than one percent of revenues and the net decrease in costs is even more supportive of the Agency's conclusion. MSHA concludes that the proposed rule would be economically feasible for the MNM mining industry.

VI. Regulatory Flexibility Analysis and Small Business Regulatory Enforcement Fairness Act and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities but requested comments in Section IV. of this preamble.

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the proposed rule on small entities. Based on that analysis, MSHA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The Agency, therefore, is not required to develop an initial regulatory flexibility analysis. MSHA presents the factual basis for this certification below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the Small Business Administration's (SBA's) definition for a small entity, or after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not established an alternative definition and, therefore, must use SBA's definition. On February 26, 2016, SBA's revised size standards became effective. SBA updated the small business thresholds for mining by establishing a number of different levels. MSHA used the new SBA standards for the screening analysis of the final rule.

MSHA has also examined the impact of the proposed rule on mines with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, the impact of MSHA's rules and the costs of complying with them will also tend to differ for these small mines. This analysis complies with the requirements of the RFA for an analysis of the impact on ''small entities'' using both SBA's definition for small entities in the mining industry and MSHA's traditional definition.

B. Factual Basis for Certification

MSHA initially evaluates the impacts on small entities by comparing the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for the affected sector. When this threshold analysis shows estimated compliance costs have been less than one percent of the estimated revenues, the Agency has concluded that it is generally appropriate to conclude that there is no significant adverse economic impact on a substantial number of small entities.

Additionally, there is the possibility that a rule might have a positive economic impact. To properly apply MSHA's traditional criteria and consider the positive impact case, MSHA is adjusting its traditional threshold analysis criteria to consider the absolute value of one percent rather than only the adverse case. This slight change means when the absolute value of the estimated compliance costs exceed one percent of revenues, MSHA investigates whether further analysis is required. For small entities impacted by this proposed rule, MSHA estimates the revenue at $63.2 billion and costs at −$30.3 million. As a percentage, the absolute value of the impact is less than 0.05 percent; therefore, using the threshold analysis, MSHA concludes no further analysis is required and concludes the proposed rule would not have a significant impact on a substantial number of small entities. MSHA requests comments on this conclusion.

VII. Paperwork Reduction Act of 1995

The proposed changes due to this rulemaking are unlikely to change the number of collections or respondents in the currently approved collection 1219–0089. The minor recordkeeping change may reduce the burden very slightly but MSHA concludes that any small decrease in the time needed to make the record may not be measurable. MSHA requested comments on this issue in Section IV. of this preamble but is not

requesting any change to the approved collection at this time.

VIII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the proposed rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that this proposed rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than $100 million (adjusted for inflation) in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act requires no further Agency action or analysis.

B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that this proposed rule will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. Accordingly, MSHA certifies that this proposed rule would not impact family well-being.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

Section 5 of E.O. 12630 requires Federal agencies to ''identify the takings implications of proposed regulatory actions . . . .'' MSHA has determined that this proposed rule does not include a regulatory or policy action with takings implications. Accordingly, E.O. 12630 requires no further Agency action or analysis.

D. Executive Order 12988: Civil Justice Reform

Section 3 of E.O. 12988 contains requirements for Federal agencies promulgating new regulations or reviewing existing regulations to minimize litigation by eliminating drafting errors and ambiguity, providing a clear legal standard for affected conduct rather than a general standard, promoting simplification, and reducing burden. MSHA has reviewed this proposed rule and has determined that it would meet the applicable standards provided in E.O. 12988 to minimize litigation and undue burden on the Federal court system.

E. Executive Order 13132: Federalism

MSHA has determined that this proposed rule does not have federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, E.O. 13132 requires no further Agency action or analysis.

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

MSHA has determined that this proposed rule does not have tribal implications because it will not have substantial direct effects 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. Accordingly, E.O. 13175 requires no further Agency action or analysis.

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

E.O. 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action that adversely affects energy supply, distribution, or use. In its 2017 rule, MSHA reviewed the rule for its energy effects. The impact on uranium mines is applicable in this case. MSHA data show only two active uranium mines in 2016. Because this proposed rule would have a net cost savings, MSHA has concluded that it would not be a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, under this analysis, no further Agency action or analysis is required.

List of Subjects in 30 CFR Parts 56 and 57

Metals, Mine safety and health, Reporting and recordkeeping requirements.

Wayne D. Palmer,

Acting Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA is proposing to amend chapter I of title 30 of the Code of Federal Regulations as amended by the final rule published on January 23, 2017 (82 FR 7695), effective May 23, 2017, and delayed on May 22, 2017 (82 FR 23139), until October 2, 2017 (82 FR 23139), as follows:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 2. In § 56.18002, revise paragraph (a) introductory text, the second sentence of paragraph (b), and paragraph (c) to read as follows:

§ 56.18002 Examination of working places.

(a) A competent person designated by the operator shall examine each working place at least once each shift before work begins or as miners begin work in that place for conditions that may adversely affect safety or health.

* * * * *

(b) * * * The record shall contain the name of the person conducting the examination; date of the examination; location of all areas examined; and description of each condition found that may adversely affect the safety or health of miners and is not corrected promptly.

(c) When a condition that may adversely affect safety or health is not corrected promptly, the examination record shall include, or be supplemented to include, the date of the corrective action.

* * * * *

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

■ 3. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 4. In § 57.18002, revise paragraph (a) introductory text, the second sentence of paragraph (b), and paragraph (c) to read as follows:

§ 57.18002 Examination of working places.

(a) A competent person designated by the operator shall examine each working place at least once each shift before work begins or as miners begin work in that place for conditions that may adversely affect safety or health.

* * * * *

(b) * * * The record shall contain the name of the person conducting the

examination; date of the examination; location of all areas examined; and description of each condition found that may adversely affect the safety or health of miners and is not corrected promptly.

(c) When a condition that may adversely affect safety or health is not corrected promptly, the examination record shall include, or be supplemented to include, the date of the corrective action.

* * * * *

[FR Doc. 2017–19381 Filed 9–11–17; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

[Docket No. MSHA–2014–0030]

RIN 1219–AB87

Examinations of Working Places in Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; delay of effective date.

SUMMARY: On January 23, 2017, the Mine Safety and Health Administration (MSHA) published a final rule in the **Federal Register** amending the Agency's standards for the examination of working places in metal and nonmetal mines. MSHA is proposing to delay the effective date of the Agency's final rule to March 2, 2018. This extension would offer additional time for MSHA to provide stakeholders training and compliance assistance.

DATES: Comments must be received or postmarked by midnight Eastern Daylight Saving Time (DST) on September 26, 2017.

ADDRESSES: Submit comments and informational materials, identified by RIN 1219–AB87 or Docket No. MSHA–2014–0030, by one of the following methods:

Federal E-Rulemaking Portal: https://www.regulations.gov. Follow the on-line instructions for submitting comments.

Email: zzMSHA-comments@dol.gov.

Mail: MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Hand Delivery or Courier: 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th Floor East, Suite 4E401.

Fax: 202–693–9441.

Instructions: All submissions must include RIN 1219–AB87 or Docket No. MSHA–2014–0030. Do not include personal information that you do not want publicly disclosed; MSHA will post all comments without change, including any personal information provided.

Email Notification: To subscribe to receive email notification when MSHA publishes rulemaking documents in the **Federal Register**, go to *https://www.msha.gov/subscriptions.*

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov* or *http://www.msha.gov/currentcomments.asp.* To read background documents, go to *http://www.regulations.gov.* Review the docket in person at MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, Virginia, between 9 a.m. and 5 p.m. DST Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th Floor East, Suite 4E401.

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Delay of Effective Date

On January 23, 2017, MSHA published a final rule in the **Federal Register** (82 FR 7680) amending the Agency's standards for the examination of working places in metal and nonmetal mines. The final rule was scheduled to become effective on May 23, 2017. On May 22, 2017, MSHA published a final rule delaying the effective date to October 2, 2017 (82 FR 23139), to assure that mine operators and miners affected by the final examinations rule have the training and compliance assistance they need prior to the rule's effective date.

At this time, the Agency is proposing to delay the rule's effective date beyond October 2, 2017, to March 2, 2018. As MSHA has reiterated to industry stakeholders, MSHA made a commitment to the industry to hold informational meetings around the country and to develop and distribute compliance assistance material prior to enforcing the rule. MSHA also committed to conducting compliance assistance visits at metal and nonmetal mines throughout the country. Further, extending the effective date would permit more time for MSHA to address issues raised by stakeholders during quarterly training calls and stakeholder meetings and compliance assistance visits. MSHA is considering concerns raised by stakeholders on certain provisions in the rule and how best to address them. MSHA intends to collaborate with and seek input from stakeholders regarding these issues. At the same time, MSHA is seeking comment on a proposed rule that may address some of these issues. The extension also would provide MSHA more time to train its inspectors to help assure consistency in MSHA enforcement. MSHA will make the Agency's inspector training materials available to the mining community to assist miners and mine operators in effectively implementing the rule, thus enhancing the safety of miners.

Wayne D. Palmer,

Acting Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2017–19380 Filed 9–11–17; 8:45 am]

BILLING CODE 4520–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0332; FRL–9967–56–Region 9]

Approval of California Air Plan Revisions, Placer County and Ventura County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Placer County Air Pollution Control District (PCAPCD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern emissions of oxides of nitrogen (NO_X) from incinerators in the PCAPCD and previously unregulated types of fuel burning equipment in the VCAPCD. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 12, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2017–0332 at *http://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited 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 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: Kevin Gong, EPA Region IX, (415) 972–3073, *Gong.Kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted or amended	Submitted
PCAPCD	206	Incinerator Burning	10/13/2016	01/24/2017
VCAPCD	74.34	NO_X Reductions from Miscellaneous Sources	12/13/2016	2/24/2017

On April 17, 2017, the EPA determined that the submittal for PCAPCD Rule 206 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review. On August 2, 2017, the EPA determined that the submittal for VCAPCD Rule 74.34 also met the completeness criteria.

B. Are there other versions of these rules?

We approved an earlier version of PCAPCD Rule 206 into the SIP on November 15, 1978 (43 FR 53035) for the portions of the district regulating the Mountain Counties Air Basin and Sacramento Valley Air Basin. We approved another earlier version of PCAPCD Rule 206 into the SIP on August 21, 1979 (46 FR 27115) for the portion of the district regulating the Lake Tahoe Air Basin. There are no previous versions of VCAPCD Rule 74.34 in the SIP.

C. What is the purpose of the submitted rules?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. PCAPCD Rule 206 modernizes the requirements and limits for incineration units in Placer County. VCAPCD Rule 74.34 establishes emission limits and operational requirements for sources of NO_X that were previously unregulated by a prohibitory rule (including kilns, dryers, and ovens) for Ventura County. The EPA's technical support documents (TSDs) have more information about these rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each major source of NO_X in ozone nonattainment areas classified as moderate or above (see CAA sections 182(b)(2) and 182(f)). The PCAPCD regulates an ozone nonattainment area classified as ''Severe'' for the 2008 and 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) and the 1-hour ozone NAAQS. The VCAPCD regulates an ozone nonattainment area classified as ''Serious'' for the 2008 and 1997 8-hour ozone NAAQS and ''Severe'' for the 1-hour ozone NAAQS (40 CFR 81.305). Therefore, these rules must implement RACT in their respective counties.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''NO_X Emissions from Industrial/Commercial/Institutional (ICI) Boilers,'' EPA OAQPS, March 1994, EPA–453/R–94–022.
4. ''NO_X Emissions from Process Heaters,'' EPA OAQPS, September 1993, EPA–453/R–93–034 1993/09.
5. ''Standards of Performance for Commercial and Industrial Solid Waste Incineration Units,'' 40 CFR part 60, subpart CCCC.
6. ''Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006,'' 40 CFR part 60, subpart EEEE.

B. Do the rules meet the evaluation criteria?

VCAPCD Rule 74.34 adopts emission limits, monitoring, recordkeeping, and reporting requirements for NO_X sources that were previously unregulated by a SIP-approved rule, resulting in an estimated NO_X reduction of 40 tons per year. PCAPCD Rule 206 updates control requirements for incinerator units in the county to meet SIP requirements to implement RACT. For these reasons, we conclude that these rules are consistent

with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agencies modify the rules.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules because they fulfill all relevant requirements. We will accept comments from the public on this proposal until October 12, 2017. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the 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, the EPA is proposing to incorporate by reference the PCAPCD and VCAPCD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: August 30, 2017.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2017–19213 Filed 9–11–17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2015–0656; FRL–9967–55–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Under the 2008 Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Delaware. This revision pertains to reasonably available control technology (RACT) requirements under the 2008 8-hour ozone national ambient air quality standard (NAAQS). Delaware's submittal for RACT for the 2008 ozone NAAQS includes (1) certification that, for certain categories of sources, RACT controls approved by EPA into Delaware's SIP for previous ozone NAAQS are based on currently available technically and economically feasible controls and continue to represent RACT for 2008 8-hour ozone NAAQS implementation purposes; (2) the adoption of new or more stringent regulations or controls that represent RACT control levels for certain other categories of sources; and (3) a negative declaration that certain categories of sources do not exist in Delaware. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 12, 2017.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2015–0656 at *http://www.regulations.gov,* or via email to *stahl.cynthia@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to

make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Leslie Jones Doherty, (215) 814–3409, or by email at *jones.leslie@epa.gov.*

SUPPLEMENTARY INFORMATION: On May 4, 2015, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to its SIP that addresses the requirements of RACT under the 2008 8-hour ozone NAAQS.

I. Background

A. General

Ozone is formed in the atmosphere by photochemical reactions between volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight. In order to reduce these ozone concentrations, the CAA requires control of VOC and NO_X emission sources to achieve emission reductions in moderate or more serious nonattainment areas. Among effective control measures, RACT controls significantly reduce VOC and NO_X emissions from major stationary sources.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[1] Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NO_X or VOC emissions above a certain applicability threshold that is based on the ozone nonattainment classification of the area: Marginal, Moderate, Serious, or Severe. *See* ''major stationary source'' in CAA sections 182(b), 184(b) and 302. Sections 182(b)(2) and 182(f)(1) of the CAA require states with moderate (or worse) ozone nonattainment areas to implement RACT controls on all stationary sources and source categories covered by a control technique guideline (CTG) document issued by EPA and on all major sources of VOC and NO_X emissions located in the area. EPA's CTGs establish presumptive RACT control requirements for various VOC source categories. The CTGs typically identify a particular control level that EPA recommends as being RACT. In some cases, EPA has issued Alternative Control Techniques guidelines (ACTs) primarily for NO_X source categories, which in contrast to the CTGs, only present a range for possible control options but do not identify any particular option as the presumptive norm for what is RACT. Section 183(c) of the CAA requires EPA to revise and update CTGs and ACTs as the Administrator determines necessary. EPA issued eleven new CTGs from 2006 through 2008 for a total of 44 CTGs issued since November 1990. States are required to implement RACT for the source categories covered by CTGs through the SIP.

Pursuant to section 184(b) of the CAA, the same requirements for sources of NO_X and VOC apply to any areas in an ozone transport region (OTR). A single OTR has been established under section 184(a), comprising all or part of 12 eastern states and the District of Columbia.[2] The entire State of Delaware is part of the OTR and, therefore, must comply with the RACT requirements in section 184(b)(1)(B) and (2) of the CAA. Specifically, section 184(b)(1)(B) requires the implementation of RACT in OTR states with respect to all sources of VOC covered by a CTG. Additionally, section 184(b)(2) states that any stationary source with the potential to emit 50 tpy of VOC emission shall be considered a major source and requires the implementation of major stationary source requirements in the OTR states as if the area were a moderate nonattainment area. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NO_X or VOC emissions above a certain applicability threshold that is based on the ozone nonattainment classification of the area: Marginal, Moderate, Serious, or Severe. *See* ''major stationary source'' in CAA sections 182(b) and 184(b).

B. Delaware History

Delaware has been subject to the CAA RACT requirements as a result of previous ozone designations. Under the 1-hour ozone NAAQS, Kent and New Castle Counties in Delaware were designated part of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD severe ozone nonattainment area, and Sussex County was designated as a marginal ozone nonattainment area.

Since the entire State of Delaware has been part of the OTR, RACT was implemented in Sussex County as a moderate nonattainment area. Therefore, all three counties were subject to RACT requirements under the 1-hour ozone standard. Since the early 1990's, Delaware implemented numerous RACT controls throughout the State to meet the CAA RACT requirements under the 1-hour and the 1997 8-hour ozone standards.

Under the 1997 8-hour ozone NAAQS, the entire State of Delaware (Kent, New Castle and Sussex Counties) was designated as a part of the Philadelphia-Wilmington-Atlantic City moderate nonattainment area, and therefore continued to be subject to the CAA RACT requirements. *See* 69 FR 23858, 23931 (April 30, 2004). Delaware revised and promulgated its RACT regulations and demonstrated that it complied with the CAA RACT requirements in a SIP revision approved by EPA on July 23, 2008 (73 FR 42681).

Under CAA section 109(d), EPA is required to periodically review and promulgate, as necessary, the ozone NAAQS to continue to protect human health and the environment. On March 27, 2008, EPA revised the 1997 8-hour ozone standard to a new 0.075 ppm level (73 FR 16436). On May 21, 2012, EPA finalized designations for the 2008 8-hour ozone NAAQS (77 FR 30087). Under the 2008 8-hour ozone standard, New Castle County of Delaware was designated as a part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal nonattainment area, and Sussex County of Delaware was designated as a stand-alone marginal nonattainment area (77 FR 30088). However, due to its location in the OTR, the entire State of Delaware is required to address the CAA RACT requirements for a moderate nonattainment area by submitting to EPA a SIP revision that demonstrates how Delaware meets RACT requirements under the standard. Delaware is required to implement RACT for the 2008 ozone NAAQS on all VOC sources covered by a CTG issued by EPA, as well as all other major stationary sources located within the State boundaries with the potential to

[1] *See* December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas.'' *see also* 44 FR 53761, 53762 (September 17, 1979).

[2] Only a portion of the Commonwealth of Virginia is included in the OTR.

emit 50 or 100 tons per year or more of VOC or NO_X, respectively. Therefore, the RACT requirements under CAA sections 182 and 184 apply to CTG sources, including eleven new CTG that EPA issued between 2006 and 2008, and any other VOC or NO_X sources.

C. EPA Guidance and Requirements

EPA has provided more substantive RACT requirements through final implementation rules for each ozone NAAQS as well as guidance. On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (the 2008 Ozone Implementation Rule). *See* 80 FR 12264. This rule addressed, among other things, control and planning obligations as they apply to nonattainment areas under the 2008 8-hour ozone NAAQS, including RACT and RACM. In this rule, EPA specifically required that states meet the RACT requirements either through a certification that previously adopted RACT controls in their SIP revisions approved by EPA under a prior ozone NAAQS continue to represent adequate RACT control levels for attainment of the 2008 8-hour ozone NAAQS, or through the adoption of new or more stringent regulations or controls that represent RACT control levels. A certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data. Adoption of new RACT regulations will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. Additionally, states are required to submit a negative declaration if there are no CTG major sources of VOC and NO_X emissions within the nonattainment area in lieu of, or in addition to, a certification.

II. Summary of SIP Revision

On May 4, 2015 Delaware submitted a SIP revision to address all the requirements of RACT set forth by the CAA under the 2008 8-hour ozone NAAQS (the 2015 RACT Submission). Specifically, Delaware's 2015 RACT Submission includes: (1) A certification that for certain categories of sources previously adopted NO_X and VOC RACT controls in Delaware's SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; (2) the adoption of new or more stringent regulations or controls that represent RACT control levels for certain categories of sources; and (3) a negative declaration that certain CTG or non-CTG major sources of VOC and NO_X sources do not exist in Delaware.

A. VOC RACT Controls

Delaware Air Pollution Control Regulation No. 1124 (formerly Regulation 24) contains Delaware's VOC RACT controls regulations for all VOC sources greater than 50 tpy that were implemented and approved into the Delaware SIP under the 1-hour and 1997 8-hour ozone NAAQS.[3] Delaware is certifying that these regulations, all previously approved by EPA into the SIP, continue to meet the RACT requirements for the 2008 8-hour ozone NAAQS for major stationary sources and CTG covered sources of VOCs. In addition, since EPA's approval of Delaware's 1997 8-hour ozone RACT SIP revision (73 FR 42681, July 23, 2008), the following sections in Regulation 1124 have been updated to meet the requirements of EPA's CTGs: Sections 11, 12, 13, 16, 19, 20, 22, 23, 37 and 45. All these revisions have been previously approved into Delaware's SIP and meet the requirements of EPA's CTGs issued up to and including July 20, 2014. Since EPA's approval of Delaware's 1997 8-hour ozone NAAQS RACT SIP revision, Delaware adopted and EPA approved for the Delaware SIP, three new provisions or regulations to meet RACT requirements. These are (1) Regulation 1124, Section 8, Handling, Storage, and Disposal of VOCs, (2) Regulation 1124, Section 46, Crude Oil Lightering Operations, and (3) Regulation 1141, section 4, Adhesives and Sealants. More detailed information on these provisions as well as a detailed summary of EPA's review can be found in the Technical Support Document (TSD) for this action which is available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2015–0656.

Delaware also submitted a negative declaration that the following VOC CTG source categories do not exist in Delaware: Manufacture of pneumatic rubber tires; wood furniture manufacturing operations; shipbuilding and ship repair operations (surface coating); and fiberglass boat manufacturing materials.

Delaware's 2015 RACT Submission also discusses Regulation 1141, Section 1.0, Architectural and Industrial Maintenance Coatings and Regulation 1141, Section 2.0, Consumer Products. These regulations, both previously approved by EPA into the Delaware SIP, establish VOC content limits in various coating materials and consumer products. Although these rules will assist Delaware in its efforts to attain the ozone standard, they are ''beyond RACT'' levels as they apply to non-major stationary sources.

B. NO_X RACT Controls

Delaware's 2015 RACT Submission asserts that Delaware Air Pollution Control Regulation No. 1112 (formerly Regulation 12) contains Delaware's NO_X RACT controls that were implemented and approved into the Delaware SIP under the 1-hour and the 1997 8-hour ozone NAAQS. Regulation 1112 has been in effect since 1993 and was approved by EPA as RACT under the 1997 8-hour ozone standard for major stationary sources of NO_X. 66 FR 32231 (June 14, 2001). In Regulation 1112, Delaware's NO_X RACT controls are specified by source groups such as fuel burning equipment based on heat input capacity, gas turbines and stationary internal combustion engines. In the 2015 RACT Submission, Delaware is certifying that Regulation 1112 continues to represent the lowest emission limits based on currently available and economically feasible control technology for the source categories and, therefore, meets the RACT requirements for the 2008 8-hour ozone NAAQS for major stationary source NO_X controls as required by CAA sections 182(b)(2), 182(f), and 184(b)(2). The details of Regulation 1112 are contained in the TSD prepared for this rulemaking.

Delaware's Regulation 1112 provides presumptive NO_X limits for major stationary sources of NO_X but also provides for a case-by-case RACT determination process. For case-by-case determinations under Regulation 1112, three (3) stationary sources which previously received NO_X RACT determinations in Delaware's SIP have been shutdown and Delaware has requested EPA remove these RACT determinations from the SIP. These shutdown sources are (1) General Chemical Corporation facility's sulfuric

[3] EPA notes that Delaware's Regulation 1124 at subsection 1.4 contains a provision that was identified as containing inappropriate exemptions for startup and shutdown as well as containing inappropriate director's discretion provisions in EPA's rulemaking, ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' (EPA's SSM SIP Call). *See* 80 FR 33839 (June 12, 2015). EPA provides analysis of the interplay and effects of the EPA's SSM SIP Call and Regulation 1124, subsection 1.4 on this proposed rulemaking in Section III of this rulemaking action.

acid and inter-stage absorption system, (2) General Chemical Corporation facility's metallic nitrite process, and (3) SPI Polyols, Incorporated facility's Polyhydrate Alcohol Catalyst Regenerative process. Delaware requests that these three NO_X RACT determinations be removed from Delaware's SIP as the sources of NO_X are permanently closed. The remaining case by case RACT determination for CitiSteel USA, Incorporated, Electric Arc Furnace (EAF) rated at 150 tons per charge was approved by EPA as RACT for the 1997 ozone NAAQS (73 FR 42681), and Delaware states that the case-by-case NO_X RACT determination continues to represent RACT level control for this source. Pursuant to Delaware's case by case authority in Regulation 1112, Delaware also proposes new limits as RACT for two units at the Delaware City Refinery, including the fluid-coking unit (FCU) and the fluid-catalytic-cracking unit (FCCU).[4]

In addition, in the 2015 RACT Submission, Delaware states it has implemented specific NO_X controls in other regulations to tighten requirements for relevant subgroups contained in Regulation 1112. Delaware asserts Regulations 1142, 1144, 1146, and 1148 contain additional NO_X controls that have been implemented and previously approved into the Delaware SIP.[5] Delaware states that these regulations in conjunction with the requirements from Regulation 1112 meet the RACT requirements for the 2008 8-hour ozone NAAQS for these source categories. These source categories are industrial boilers, industrial boilers and heat processors at petroleum refineries, stationary generators, electric generating units (EGU), and combustion turbines. Regulations 1112, 1142, 1144, 1146 and 1148 all establish applicability, exemptions, definitions, and emission standards as well as requirements for compliance, monitoring, recordkeeping and reporting for their respective sources. Further details of Delaware's NO_X RACT determination in the 2015 RACT Submission for the 2008 8-hour ozone NAAQS can be found in the TSD prepared for this rulemaking. Delaware also submitted a negative declaration for cement kilns as a major source category of NO_X emissions that does not exist in Delaware.

III. EPA's Evaluation of Delaware's SIP Revision

A. RACT

EPA has reviewed Delaware's 2015 RACT Submission and finds Delaware's certification of the RACT regulations for major sources of VOC and NO_X previously approved by EPA for the 1-hour and 1997 8-hour ozone NAAQS continue to represent RACT control level for the source categories.[6] EPA also finds that Delaware's SIP implements RACT with respect to all sources of VOCs covered by a CTG issued prior to July 20, 2014 and all major stationary sources of VOC and NO_X covered by Delaware's regulations and case-by-case RACT. EPA accepts Delaware's negative declarations for VOC sources as there are no applicable sources of cement kilns in the State. EPA finds that Delaware's major stationary source VOC and NO_X regulations represent the lowest emission limits based on currently available and economically feasible control technology for these source categories. EPA's review of this material indicates that Delaware's 2015 RACT Submission meets the RACT requirements for the 2008 8-hour ozone NAAQS for applicable CTG source categories and major stationary sources of VOC and NO_X to address sections 182(b), 182(f) and 184(b)(2) of the CAA.

With respect to the previous case by case RACT determinations submitted by Delaware and approved by EPA for the Delaware SIP, the CAA section 110(l) states ''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 (RFP) or any applicable requirement of the CAA.'' EPA finds that the removal of the emission limits for (1) the Polyhydrate Alcohol Catalyst Regenerative process SPI Polyols, Incorporated, (2) the sulfuric acid process and inter-stage absorption system at General Chemical Corporation and (3) the metallic nitrite process at General Chemical Corporation from the Delaware SIP will not interfere with attainment of any NAAQS or with RFP or any applicable requirement of the CAA because these sources have permanently shutdown and thus emissions have been completely eliminated. EPA finds the NO_X RACT determination for CitiSteel USA, Incorporated, Electric Arc Furnace (EAF) continues to represent the lowest emission limitation that is reasonably available considering technological and economic feasibility for this source. With respect to the FCU and FCCU at the Delaware City Refinery Company, EPA finds that the emission limits, compliance requirements and recordkeeping and reporting requirements established by Delaware represent RACT level of control for these units. Further details of EPA's review and rationale for proposing to approve these SIP revisions can be found in the TSD prepared for this rulemaking.

B. RACT and the EPA Startup, Shutdown, and Maintenance (SSM) SIP Call

In the 2015 RACT Submission, Delaware is certifying that Regulation 1124, Control of Volatile Organic Compound Emissions, and Regulation 1142, Control of Nitrogen Oxide Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, contain RACT levels of control for meeting the 2008 8-hour ozone NAAQS requirements for certain major sources of NO_X and VOC. On May 22, 2015, the EPA Administrator signed a final action, EPA's SSM SIP Call (formally, the ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction''). 80 FR 33839. With regard to the Delaware SIP, seven Delaware regulations including Regulation 1124, Control of Volatile Organic Compound Emissions, section 1.4; and Regulation 1142, Control of Nitrogen Oxide Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, section 2.3.1.6 were cited as giving the State discretion to create exemptions allowing excess emissions during startup and shutdown and were thus inconsistent with EPA policy as expressed in the EPA's SSM SIP Call and the requirements of the

[4] Limits are federally enforceable via a consent decree between EPA, Delaware and Delaware City Refinery Company. *See* United States of America, *et al.,* v. Motiva Enterprises LLC, No. H–01–0978.

[5] EPA notes that Delaware's Regulation 1142 at subsection 2.3.1.6 contains a provision that was identified as containing inappropriate exemptions for startup and shutdown as well as containing an inappropriate director's discretion provision in EPA's SSM SIP call. 80 FR 33839. EPA provides analysis of the interplay and effect of EPA's SSM SIP Call and Regulation 1142, subsection 2.3.1.6 on this proposed rulemaking in Section III of this rulemaking action.

[6] As noted above, two of Delaware's regulations which Delaware relies upon as RACT for the 2008 ozone NAAQS were involved in EPA's SSM SIP Call, Delaware's Regulation 1142 (subsection 1.4) and Regulation 1142 (subsection 2.3.1.6). These regulations contain provisions that were identified as containing inappropriate exemptions for startup and shutdown as well as containing inappropriate director's discretion provisions in EPA's SSM SIP call. 80 FR 33839. EPA's analysis of the impact and effect of EPA's SSM SIP Call and Regulations 1124 (subsection 1.4) and 1142 (subsection 2.3.1.6) on this proposed rulemaking is provided in this Section III of this rulemaking action.

CAA. Delaware's 2015 RACT Submission was sent to EPA on May 4, 2015, prior to promulgation of EPA's SSM SIP Call.

In 2016, Delaware revised Regulations 1124 and 1142, with a State effective date of January 11, 2017, to remove the provisions identified by EPA in EPA's SSM SIP Call as being substantially inadequate and inconsistent with the CAA. Subsequently, on November 21, 2016, Delaware submitted a SIP revision to address EPA's SSM SIP Call for six of the seven Delaware regulations mentioned in the SSM SIP Call, including the portions affecting Regulation 1124 (subsection 1.4) and Regulation 1142 (subsection 2.3.1.6). Delaware's November 21, 2016 SSM SIP revision will be dealt with in a separate rulemaking action.

Challenges to EPA's SSM SIP Call are now pending before the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), in consolidated Case No. 15–1239 captioned *Environmental Committee of the Florida Electric Power Coordinating Group, Inc.* v. *EPA* (consolidated). Within the context of that litigation, the EPA has informed the D.C. Circuit that ''EPA intends to closely review the SSM Action, and the prior positions taken by the Agency with respect to the SSM Action may not necessarily reflect its ultimate conclusions after that review is complete.'' Case No. 15–1239, Document #1671681 (available in the docket for this rulemaking action). In a July 24, 2017 Status Report, EPA again told the D.C. Circuit that it ''is continuing to review the SSM Action to determine whether the Agency will reconsider all or part of the SSM Action, and/or grant the State of Texas' administrative petition for reconsideration in whole or in part.'' Because our review of the Delaware 2015 RACT Submission necessarily includes our review of two regulations, Regulation 1124 and 1142, which are directly impacted by the SSM SIP Call, EPA would therefore necessarily have to apply the substance of the SSM SIP Call which (1) is currently the subject of litigation in the D.C. Circuit and (2) is under review by the EPA with the result of that review uncertain either in terms of the substance or the date it will conclude. EPA is still actively reviewing the SSM SIP Call. Therefore, EPA is proposing to approve the 2015 RACT Submission under two alternative bases. EPA plans to take final action on the 2015 RACT Submission adopting the basis that is consistent with the Agency's final position on the SSM SIP Call along with appropriate consideration of public comments received.

One alternative basis for EPA's proposed approval of Delaware's 2015 RACT Submission assumes that EPA will change its position and related SSM Guidance outlined in the SSM SIP Call in such a way that EPA would withdraw the SSM SIP Call as to Delaware Regulations 1124 and 1142.[7] Based on this assumed EPA withdrawal of Delaware's portion of the EPA's SSM SIP Call, EPA proposes to find that Delaware's 2015 RACT Submission, including Delaware's Regulations 1124 and 1142 as presently included in the Delaware SIP, is fully consistent with Clean Air Act requirements.

Under the other alternative rationale, EPA assumes that EPA's position (and related guidance) outlined in the SSM SIP Call will not change in such a way that EPA would withdraw the SSM SIP Call as to Delaware Regulations 1124 and 1142. Accordingly, EPA is proposing to approve the 2015 RACT Submission as addressing RACT requirements for the 2008 ozone NAAQS because EPA intends to propose approval and take final rulemaking action approving the revised versions of Regulations 1124 and 1142 as revised in Delaware's response to the SSM SIP Call. This basis for proposed approval of the 2015 RACT Submission is based upon EPA approving Delaware's revisions to Regulations 1124 and 1142 prior to finalizing our action on the 2015 RACT Submission.[8] By taking such final rulemaking action approving the versions of Regulations 1124 and 1142 prior to EPA taking final rulemaking action on this 2015 RACT Submission, the regulations Delaware relies upon for NO_X and VOC RACT would no longer include any provisions identified in EPA's SSM SIP Call.

EPA is taking public comment on our proposed alternatives discussed herein for approval for Delaware's 2015 RACT Submission for the NO_X and VOC RACT for 2008 ozone NAAQS.

[7] This alternative basis for proposed approval assumes that EPA has changed its SSM Guidance and withdrawn the SSM SIP Call as to Delaware Regulations 1124 and 1142. However, neither of those actions are being effectuated here. Therefore, EPA does not consider those issues open for public comment as part of this rulemaking action. Any comments filed on this rulemaking that relate to the possibility of EPA changing the SSM Guidance generally or a possible withdrawal of EPA's SSM SIP Call as to Delaware Regulations 1124 and 1142 will be considered outside the scope of this rulemaking, which is limited to EPA's proposed action on Delaware's 2015 RACT Submission.

[8] However, EPA notes that we cannot prejudge a final approval on the SSM SIP Call submission. If EPA were to change direction based on comments received on proposed rulemaking to approve that SIP submission, we would not be able to approve the SSM SIP Call submission, and therefore we would not be able to give final approval to the 2015 RACT Submission.

IV. Proposed Action

EPA is proposing to approve Delaware's 2015 RACT Submission on the basis that Delaware has met the RACT requirements under the 2008 8-hour ozone NAAQS per sections 182(b), 182(f) and 184(b)(2) for the reasons explained in this notice, including our position relating to the SSM SIP Call and the related provisions within Regulations 1124 and 1142 presently in the Delaware SIP. EPA finds that Delaware's 2015 RACT Submission demonstrates that the State has adopted air pollution control strategies that represent RACT for the purposes of compliance with the 2008 8-hour ozone standard for all major stationary sources of VOC and NO_X. EPA finds that Delaware's SIP implements RACT with respect to all sources of VOCs covered by a CTG issued prior to July 20, 2014 as well as represents RACT for all CTG VOC and NO_X major stationary sources of. EPA is proposing to approve source specific NO_X RACT determinations for two (2) units at the Delaware City Refinery Company. EPA is proposing to remove, in accordance with section 110 of the CAA, three (3) source specific NO_X RACT determinations for prior ozone NAAQS from Delaware's SIP as the three processes at both facilities have permanently shutdown—one determination for SPI Polyols, Incorporated and two determinations for General Chemical Corporation. Delaware's SIP revision is based on a combination of (1) certification that for certain categories of sources previously adopted RACT controls in Delaware's SIP that were approved by EPA under the 1-hour ozone NAAQS and 1997 8-hour ozone NAAQS are based on currently available technically and economically feasible controls, and that they continue to represent RACT for the 2008 8-hour standard implementation purposes; (2) the adoption of new or more stringent regulations or controls into the Delaware SIP that represent RACT control levels for certain categories of sources; and (3) the negative declaration that certain CTG or other major sources of VOC and NO_X emissions do not exist within Delaware. EPA is soliciting public comments on the issues discussed in this document relevant to RACT requirements for Delaware for the 2008 ozone NAAQS. These comments will be considered before taking final action.

V. Incorporation by Reference

In this proposed 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 source-specific RACT determinations under the 2008 8-hour ozone NAAQS for certain major sources of NO_X and VOC emissions. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule, Delaware's 2008 8-hour ozone RACT SIP revision does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: August 30, 2017.

John Armstead,

Acting Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2015–0856, FRL–9967–54–Region 10]

Air Plan Approval; ID; 2012 $PM_{2.5}$ Standard Infrastructure Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the Idaho State Implementation Plan (SIP) meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for the annual particulate matter ($PM_{2.5}$) standard on December 14, 2012. Whenever a new or revised NAAQS is promulgated, the CAA requires states to submit a plan for the implementation, maintenance and enforcement of such NAAQS. The plan is required to address basic program elements, including but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. On December 23, 2015, the State of Idaho submitted a certification to the EPA that the Idaho SIP meets the infrastructure requirements for the 2012 $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before October 12, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2015–0856, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Matthew Jentgen, Air Planning Unit, Office of Air and Waste (OAW–150), Environmental Protection Agency, Region 10, 1200 Sixth Ave., Suite 900, Seattle, WA 98101; telephone number: 206–553–0340, email address: *jentgen.matthew@epa.gov.*

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

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I. Background

On July 18, 1997, the EPA promulgated a new 24-hour and a new annual NAAQS for $PM_{2.5}$ (62 FR 38652). On October 17, 2006, the EPA revised the NAAQS for $PM_{2.5}$, tightening the 24-

hour $PM_{2.5}$ standard from 65 micrograms per cubic meter (μg/m³) to 35 μg/m³, and retaining the annual $PM_{2.5}$ NAAQS at 15 μg/m³ (71 FR 61144). Subsequently, on December 14, 2012, the EPA revised the level of the health based (primary) annual $PM_{2.5}$ NAAQS to 12 μg/m³. See 78 FR 3086 (January 15, 2013).[1]

The CAA requires that states submit SIPs meeting the requirements of CAA sections 110(a)(1) and (2) within three years after promulgation of a new or revised standard. CAA sections 110(a)(1) and (2) require states to address basic SIP elements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, the so-called ''infrastructure'' requirements. To help states, the EPA issued guidance on September 13, 2013, addressing infrastructure SIP elements for certain NAAQS.[2] As noted in the guidance, to the extent an existing SIP already meets the CAA section 110(a)(2) requirements, states may certify that fact via a letter to the EPA.

On December 23, 2015, the State of Idaho submitted certifications to the EPA that the Idaho SIP meets the infrastructure requirements for the 2012 $PM_{2.5}$ NAAQS.

II. CAA Sections 110(a)(1) and (2) Infrastructure Elements

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. CAA section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. These requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements, with their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.[3]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

The EPA's guidance clarified that two elements identified in CAA section 110(a)(2) are not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to CAA section 172 and the various pollutant specific subparts 2–5 of part D. These requirements are: (i) Submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by CAA section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or CAA section 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title I of the CAA are not changed by a new NAAQS.

III. EPA Approach to Review of Infrastructure SIP Submittals

The EPA is taking action on the December 23, 2015 infrastructure submission from Idaho for purposes of the 2012 $PM_{2.5}$ NAAQS. We previously approved a similar submission as meeting infrastructure requirements for nitrogen dioxide and sulfur dioxide standards (August 11, 2014, 79 FR 46707). In the preamble of our action, we published a discussion of the EPA's approach to review of these submissions. Please see our April 17, 2014 proposed rule for the detailed discussion (79 FR 21669, at page 21670).

IV. Analysis of the Idaho Submittal

110(a)(2)(A): Emission Limits and Other Control Measures

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.

State submittal: The Idaho submittal cites an overview of the Idaho air quality laws and regulations, including portions of the Idaho Environmental Protection and Health Act (EPHA) and the Rules for the Control of Air Pollution located at IDAPA 58.01.01. Relevant laws cited include Idaho Code Section 39–105(3)(d) which provides Idaho DEQ authority to supervise and administer a system to safeguard air quality, Idaho Code Section 39–115 which provides Idaho DEQ with specific authority for the issuance of air quality permits, and Idaho Code Section 39–116 which provides Idaho DEQ authority to establish compliance schedules for air quality regulatory standards. Relevant regulations include IDAPA 58.01.01.107.03 (incorporation by reference of federal regulations), IDAPA 58.01.01.200–228 (permit to construct rules), IDAPA 58.01.01.400–410 (operating permit rules), IDAPA 58.01.01.600–624 (control of open burning), IDAPA 58.01.01.625 (visible emissions requirements and testing), IDAPA 58.01.01.725 (rules for sulfur content of fuels), and IDAPA 58.01.01.460–461 (banking of emissions).

EPA analysis: Idaho's SIP meets the requirements of section 110(a)(2)(A) for the 2012 $PM_{2.5}$ NAAQS, subject to the following clarifications. First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining this particulate matter NAAQS. The State has one area designated nonattainment for the 2012 $PM_{2.5}$ NAAQS (West Silver Valley); however, the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D, title I of the CAA to be governed by the submission deadline of section 110(a)(1). Regulations and other control measures for purposes of attainment

[1] In EPA's 2012 $PM_{2.5}$ NAAQS revision, EPA left unchanged the existing welfare (secondary) standards for $PM_{2.5}$ to address particulate matter (PM) related effects such as visibility impairment, ecological effects, damage to materials and climate impacts. This includes a secondary annual standard of 15 μg/m³ and a 24-hour standard of 35 μg/m³.

[2] Stephen D. Page, Director, Office of Air Quality Planning and Standards. ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).'' Memorandum to EPA Air Division Directors, Regions 1–10, September 13, 2013.

[3] In this notice, we are proposing to act on Idaho's submission relating to 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii). We will address Idaho's submission relating to 110(a)(2)(D)(i)(I) in a separate action.

planning under part D, title I of the CAA are due on a different schedule than infrastructure SIPs.

The Idaho SIP incorporates by reference a number of federal regulations, including the federal NAAQS at 40 CFR part 50, revised as of July 1, 2015. The EPA most recently approved the incorporation by reference of these regulations at IDAPA 58.01.01.107 ''Incorporations by Reference'' on May 12, 2017 (82 FR 22083). Idaho has incorporated by reference the 2012 $PM_{2.5}$ NAAQS into Idaho regulations.

Idaho generally regulates emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors through its SIP-approved NSR permitting programs, in addition to operating permit regulations, sulfur content of fuels regulations, and rules for the control of open burning, fugitive dust, activities that generate visible emissions, and emissions banking. The EPA most recently approved revisions to Idaho's major and minor NSR permitting programs on May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). Idaho's NSR rules incorporate by reference the federal nonattainment NSR regulations and federal PSD regulations at IDAPA 58.01.204 and IDAPA 58.01.01.205 respectively. In addition to NSR permitting regulations, Idaho's Tier II operating permit regulations at IDAPA 58.01.01.400–410 require that to obtain an operating permit, the applicant must demonstrate the source will not cause or significantly contribute to a violation of any ambient air quality standard. IDAPA 58.01.01.401.03 provides that Idaho DEQ will require a Tier II source operating permit if Idaho DEQ determines emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable PSD increment.

In addition to the permitting rules described above, Idaho has adopted rules to limit and control emissions resulting from open burning (IDAPA 58.01.01.600–624) and activities that generate visible emissions (IDAPA 58.01.01.625). Idaho has also promulgated rules addressing the sulfur content of fuels (IDAPA 58.01.01.725) and banking of emissions (IDAPA 58.01.01.460–461). Based on the above analysis, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(A) for the 2012 $PM_{2.5}$ NAAQS.

In this action, we are not proposing to approve or disapprove any existing Idaho provisions with respect to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. The EPA believes that a number of states may have SSM provisions that are contrary to the CAA and existing EPA guidance and the EPA is addressing such state regulations in a separate action. *See* ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction: Final Rule.'' (June 12, 2015, 80 FR 33840) (SSM SIP Call). The EPA determined that certain SIP provisions in 36 states (applicable in 45 statewide and local jurisdictions) were substantially inadequate to meet CAA requirements, and thus issued a SIP call for each of those 36 states. Idaho's SIP was *not* named in the SSM SIP call.

In addition, we are not proposing to approve or disapprove any existing Idaho rules with respect to director's discretion or variance provisions. Some states may have such provisions that are contrary to the CAA and existing EPA guidance and the EPA is addressing such regulations in a separate action via the SSM SIP Call (June 12, 2015, 80 FR 33840). We encourage any state having a director's discretion or variance provision that is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

110(a)(2)(B): Ambient Air Quality Monitoring/Data System

CAA section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to the EPA upon request.

State submittal: The Idaho submittal references IDAPA 58.01.01.107 and IDAPA 58.01.01.576.05 in response to this requirement. These rules incorporate by reference 40 CFR part 50 National Primary and Secondary Air Quality Standards, 40 CFR part 52 Approval and Promulgation of Implementation Plans, 40 CFR part 53 Ambient Air Monitoring Reference and Equivalent Methods, and 40 CFR part 58 Appendix B Ambient Air Quality Surveillance Quality Assurance Requirements for Prevention of Significant Deterioration. The Idaho submittal certifies that under these rules Idaho meets the infrastructure requirement to implement ambient air monitoring surveillance systems in accordance with the requirements of the CAA.

The Idaho submittal references the 2015 Idaho Annual Ambient Air Monitoring Network Plan, approved by the EPA on October 28, 2015. The Idaho submittal also references the Web site where the Idaho DEQ provides the network plan, air quality monitoring summaries, a map of the monitoring network and real-time air monitoring data.

EPA analysis: A comprehensive air quality monitoring plan, intended to meet the requirements of 40 CFR part 58 was submitted by Idaho on January 15, 1980 (40 CFR 52.670) and approved by the EPA on July 28, 1982. This air quality monitoring plan has been subsequently updated and most recently approved by the EPA on December 13, 2016.[4] The plan includes, among other things, the locations for the particulate matter monitoring network. Idaho makes the plan available for public review on the Idaho DEQ Web site at *http://www.deq.idaho.gov/air-quality/monitoring/monitoring-network.aspx.* The Web site also includes an interactive map of Idaho's air monitoring network. Based on the foregoing, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2012 $PM_{2.5}$ NAAQS.

110(a)(2)(C): Program for Enforcement of Control Measures

CAA section 110(a)(2)(C) requires states have a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

State submittal: The Idaho submittal refers to Idaho Code Section 39–108 which provides Idaho DEQ with both administrative and civil enforcement authority with respect to the Idaho EPHA, or any rule, permit or order promulgated pursuant to the EPHA. Criminal enforcement is authorized at Idaho Code Section 39–109. Emergency order authority, similar to that under section 303 of the CAA, is located at Idaho Code Section 39–112. The Idaho submittal also refers to laws and regulations related to air quality permits at IDAPA 58.01.01.200–228 (permit to construct rules).

The Idaho submittal also cites the annual incorporation by reference (IBR) rulemaking which updates Idaho's SIP to include federal changes to the NAAQS and PSD program. Idaho's submittal certifies that the annual IBR updates along with IDAPA sections

[4] Idaho Air Quality Monitoring Network Plan Approval Letter, dated December 13, 2016.

200–288 (permitting requirements for new and modified sources) and 575–587 (air quality standards and area classification) meets the CAA infrastructure requirement to implement the PSD program.

EPA analysis: With regard to the requirement to have a program providing for enforcement of all SIP measures, we are proposing to find that the Idaho provisions described above provide Idaho DEQ with authority to enforce the Idaho EPHA, air quality regulations, permits, and orders promulgated pursuant to the EPHA. Idaho DEQ staffs and maintains an administrative enforcement program to ensure compliance with SIP requirements. Idaho DEQ may issue emergency orders to reduce or discontinue emission of air contaminants where air emissions cause or contribute to imminent and substantial endangerment. Enforcement cases may be referred to the State Attorney General's Office for civil or criminal enforcement. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) related to enforcement for the 2012 $PM_{2.5}$ NAAQS.

To generally meet the requirements of CAA section 110(a)(2)(C) with regard to the regulation of construction of new or modified stationary sources, a state is required to have PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2012 $PM_{2.5}$ NAAQS. Idaho has one designated nonattainment area for the 2012 $PM_{2.5}$ NAAQS (West Silver Valley). However, as noted above, this action does not address CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR).

We most recently approved revisions to Idaho's PSD program on May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). Idaho's SIP-approved PSD program implements the 2012 $PM_{2.5}$ NAAQS and incorporates by reference the federal PSD program requirements at 40 CFR 52.21 as of July 1, 2015. As a result, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) with regard to PSD for the 2012 $PM_{2.5}$ NAAQS.

We note that on January 4, 2013, the U.S. Court of Appeals in the District of Columbia, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded two of the EPA's rules implementing the 1997 $PM_{2.5}$ NAAQS, including the ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' (May 16, 2008, 73 FR 28321) (2008 $PM_{2.5}$ NSR Implementation Rule). The court ordered the EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at 437. Subpart 4 of part D, title I of the CAA establishes additional provisions for particulate matter nonattainment areas. The 2008 $PM_{2.5}$ NSR Implementation Rule addressed by the court's decision promulgated NSR requirements for implementation of $PM_{2.5}$ in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 $PM_{2.5}$ NSR Implementation Rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 $PM_{2.5}$ NSR Implementation Rule in order to comply with the court's decision.

To address the court's remand, the EPA promulgated a final rule for the ''Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements'' on August 24, 2016 (81 FR 58011). This rule sets requirements for major stationary sources in $PM_{2.5}$ nonattainment areas. The EPA interprets the CAA section 110(a)(1) and (2) infrastructure submissions due three years after adoption or revision of a NAAQS to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which are due by the dates statutorily prescribed under subparts 2 through 5 under part D, extending as far as ten years following designations for some elements. Accordingly, our proposed approval of elements 110(a)(2)(C), (D)(i)(II), and (J), with respect to the PSD requirements, does not conflict with the court's opinion.

In addition, on January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club* v. *EPA,* 703 F.3d 458 (D.C. Cir. 2013), issued a judgment that, among other things, vacated the provisions adding the $PM_{2.5}$ Significant Monitoring Concentration (SMC) to the federal regulations, at 40 CFR 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*), that were promulgated as part of the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC); Final Rule,'' (October 10, 2010, 75 FR 64864) (2010 PSD $PM_{2.5}$ Implementation Rule). In its decision, the court held that the EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for $PM_{2.5}$ be included in all PSD permit applications. Thus, although the $PM_{2.5}$ SMC was not a required element of a state's PSD program, were a state PSD program that contains such a provision to use that provision to issue new permits without requiring ambient $PM_{2.5}$ monitoring data, such application of the vacated SMC would be inconsistent with the court's opinion and the requirements of section 165(e)(2) of the CAA.

This decision also, at the EPA's request, vacated and remanded to the EPA for further consideration the portions of the 2010 PSD $PM_{2.5}$ Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to Significant Impact Levels (SILs) for $PM_{2.5}$. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for $PM_{2.5}$, because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the **Federal Register** publication when we promulgated these provisions. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. The court's decision does not affect the PSD increments for $PM_{2.5}$ promulgated as part of the 2010 PSD $PM_{2.5}$ Implementation Rule.

The EPA amended its regulations to remove the vacated $PM_{2.5}$ SILs and SMC provisions from PSD regulations on December 9, 2013 (78 FR 73698). On August 12, 2016, we approved revisions to the Idaho SIP as being consistent with the court decision and revised EPA regulations (81 FR 53290).

The EPA has also promulgated revisions to federal PSD requirements for greenhouse gas (GHG) emissions, in response to a court remand and vacatur. Specifically, on June 23, 2014, the United States Supreme Court, in *Utility Air Regulatory Group (UARG)* v. *EPA,*[5] issued a decision that said the EPA may not treat GHGs as air pollutants for purposes of determining whether a source is a major source (or modification thereof) required to obtain a PSD permit. The Court also said the EPA could continue to require that PSD

[5] 134 S.Ct. 2427 (2014).

permits otherwise required based on emissions of pollutants other than GHGs contain limits on GHG emissions based on the application of Best Available Control Technology (BACT).

In response to the *UARG* decision, and the subsequent Amended Judgment issued by the D.C. Circuit (Amended Judgment),[6] the EPA revised the federal PSD rules to allow for the rescission of PSD permits that are no longer required under these decisions, (May 7, 2015, 80 FR 26183), and to remove the regulatory provisions that were specifically vacated by the Amended Judgment, (August 19, 2015, 80 FR 50199) (removing 40 CFR 51.166(b)(48)(v), 52.21(b)(49)(v), 52.22, 70.12, and 71.13). In addition, the EPA proposed to revise provisions in the PSD permitting regulations applicable to GHGs to fully conform with *UARG* and the Amended Judgment, but those revisions have not been finalized (Oct. 3, 2016, 81 FR 68110).

The EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision and the EPA's changes to federal PSD rules in response to the decision. At this juncture, the EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, the EPA has determined the Idaho SIP is sufficient to satisfy CAA section 110(a)(2)(C), (D)(i)(II) and (J) with respect to GHGs because the PSD permitting program previously-approved by the EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Idaho PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy CAA section 110(a)(2)(C), (D)(i)(II) and (J) for purposes of the 2012 $PM_{2.5}$ NAAQS.

The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that the EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect our proposed approval of the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C), (D)(i)(II) and (J) as those elements relate to a comprehensive PSD program. In this action we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C), (D)(i)(II) and (J) as those elements relate to a comprehensive PSD program.

With regard to the minor NSR requirement of this element, the EPA has determined that Idaho's minor NSR permitting program regulates direct $PM_{2.5}$ and NO_X and SO_2 as precursors. On August 12, 2016, we approved revisions to the Idaho SIP as meeting the federal requirements of minor NSR permitting programs at 40 CFR 51.160 through 164 (81 FR 53290).

Based on the foregoing, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 2012 $PM_{2.5}$ NAAQS.

110(a)(2)(D): Interstate Transport

CAA section 110(a)(2)(D)(i) requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state (CAA section 110(a)(2)(D)(i)(I)). Further, this section requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality, or from interfering with measures required to protect visibility (i.e. measures to address regional haze) in any state (CAA section 110(a)(2)(D)(i)(II)).

This action also does not address the requirements of CAA section 110(a)(2)(D)(i)(I), which we will address in a future action. In this proposal, we are proposing to act on Idaho's submission relating to 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii).

State submittal: For purposes of CAA 110(a)(2)(D)(i)(II), the submittal referenced Idaho's SIP-approved PSD program and Idaho's Regional Haze SIP submitted to the EPA on October 25, 2010. Idaho also cites IDAPA 58.01.01.209 that provides notice and comment procedures for various permit actions with regard to the public and to appropriate federal, state, international, and local agencies. CAA section 110(a)(2)(D)(ii) is discussed below.

EPA analysis: The EPA believes that the CAA section 110(a)(2)(D)(i)(II) PSD sub-element may be met by the State's confirmation in the submittal that new major sources and major modifications in the State are subject to a SIP-approved PSD program. We most recently approved revisions to Idaho's PSD program on May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). Idaho's SIP-approved PSD program implements the 2012 $PM_{2.5}$ NAAQS and incorporates the federal PSD program regulations at 40 CFR 52.21 by reference as of July 1, 2015. As discussed above in section 110(a)(2)(C), we believe that our proposed approval of element 110(a)(2)(D)(i)(II) is not affected by recent court vacaturs of EPA PSD implementing regulations. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) with regard to PSD for the 2012 $PM_{2.5}$ NAAQS.

The EPA believes that, with regard to the CAA section 110(a)(2)(D)(i)(II) visibility sub-element, the requirement may be satisfied by an approved SIP addressing regional haze. The EPA's reasoning is that the development of the regional haze SIPs was intended to occur in a collaborative environment among the states, and that through this process states would coordinate on emissions controls to protect visibility on an interstate basis.

The Idaho submittal references the Idaho Regional Haze SIP, submitted to the EPA on October 25, 2010, which addresses visibility impacts across states within the region. On June 9, 2011, we approved a SIP revision which provides Idaho DEQ authority to address regional haze and to implement best available retrofit technology (BART) requirements (76 FR 33651). Subsequently on June 22, 2011, we approved portions of the Idaho Regional Haze SIP, including the requirements for BART (76 FR 36329). Finally, on November 8, 2012, we approved the remainder of the Idaho Regional Haze SIP, including those portions that address CAA provisions that require states to set Reasonable Progress Goals for their Class I areas, and to develop a Long Term Strategy to achieve these goals (77 FR 66929).

The EPA is proposing to find that as a result of the prior approval of the Idaho Regional Haze SIP, the Idaho SIP contains adequate provisions to address 110(a)(2)(D)(i)(II) visibility requirements with respect to the 2012 $PM_{2.5}$ NAAQS. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2012 $PM_{2.5}$ NAAQS.

Furthermore, IDAPA 58.01.01.209 provides an opportunity for appropriate

[6] *Coalition for Responsible Regulation* v. *EPA,* Nos. 09–1322, 10–073, 10–1092, and 10–1167 (April 15, 2015).

federal, state, international, and local agencies to participate and identify any concerns in the permitting process.

Interstate and international transport provisions: CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

EPA analysis: We most recently approved revisions to Idaho's SIP-approved PSD program on May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). Idaho's SIP-approved PSD program implements the 2012 $PM_{2.5}$ NAAQS and incorporates the federal PSD program regulations at 40 CFR 52.21 by reference as of July 1, 2015. As noted above, IDAPA 58.01.01.209 (procedures for issuing permits) includes required procedures for issuing permits for new sources, including procedures for public processes, and notice to appropriate federal, state and local agencies, consistent with the requirements of the federal PSD program. Idaho issues notice of its draft permits and neighboring states consistently receive copies of those drafts. Idaho also has no pending obligations under CAA section 115 or 126(b) of the CAA. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 2012 $PM_{2.5}$ NAAQS.

110(a)(2)(E): Adequate Resources

CAA section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof), (ii) requirements that the state comply with the requirements respecting state boards under section 128 and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

State submittal: The Idaho submittal refers to Idaho Code Section 39–106, which gives the Idaho DEQ Director authority to hire personnel to carry out duties of the department. In addition, the submittal references Idaho Code 39–107, which establishes the State's Board of Environmental Quality, Idaho Code Title 59 Chapter 7 (Ethics in Government Act), and Executive Order 2013–06 which addresses composition requirements of the Idaho Board of Environmental Quality. Finally, the Idaho submittal references Idaho Code Section 39–129, which authorizes Idaho DEQ to enter into binding agreements with local governments that are enforceable as orders.

EPA analysis: We are proposing to find that the above-referenced provisions provide Idaho DEQ with adequate authority to carry out SIP obligations with respect to the 2012 $PM_{2.5}$ NAAQS as required by CAA section 110(a)(2)(E)(i). With regard to CAA section 110(a)(2)(E)(ii), we previously approved a revision to the Idaho SIP for purposes of meeting CAA section 128 and CAA section 110(a)(2)(E)(ii) on October 24, 2013 (78 FR 63394). We note that Idaho renewed the Executive Order addressing certain board requirements for an additional four years on December 14, 2016 (Executive Order No. 2016–07).[7] Finally, we are proposing to find that Idaho has provided necessary assurances that, where Idaho has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, Idaho has responsibility for ensuring adequate implementation of the SIP with regard to the 2012 $PM_{2.5}$ NAAQS as required by CAA section 110(a)(2)(E)(iii). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(E) for the 2012 $PM_{2.5}$ NAAQS.

110(a)(2)(F): Stationary Source Monitoring System

CAA section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

State submittal: The Idaho submittal states that the statutes and rules governing air quality permits provide DEQ with the ability to monitor stationary source emissions for compliance purposes and make data available to the public. The submittal references the following provisions: IDAPA 58.01.01.157, which includes source testing methods and procedures for source testing and reporting to the Idaho DEQ; IDAPA 58.01.01.121, which outlines Idaho DEQ authority to require monitoring, recordkeeping and periodic reporting related to source compliance; IDAPA 58.01.01.122, which provides Idaho DEQ authority to issue information orders and orders to conduct source emissions monitoring, recordkeeping, reporting and other requirements; IDAPA 58.01.01.211, which contains conditions for permits to construct; IDAPA 58.01.01.209, which contains procedures for issuing permits to construct, including public processes; IDAPA 58.01.01.404, which contains procedures for issuing Tier II operating permits, including public processes; IDAPA 58.01.01.405, which contains conditions for Tier II operating permits, including sampling ports, instrumentation to monitor and record, and performance testing; and Idaho Code 9–342A and IDAPA 58.01.21 which address public records. The Idaho submittal also states that Idaho reports emissions data for the six criteria pollutants to the EPA's National Emissions Inventory, which is updated every three years.

EPA analysis: The provisions cited in the Idaho submittal establishes compliance requirements for sources subject to major and minor source permitting to monitor emissions, keep and report records, and collect ambient air monitoring data. The provisions cited also provide Idaho DEQ authority to issue orders to collect additional information as needed for Idaho DEQ to ascertain compliance. In addition, IDAPA 58.01.01.211 (conditions for permits to construct) and 58.01.01.405 (conditions for Tier II operating permits) provide Idaho DEQ authority to establish permit conditions requiring instrumentation to monitor and record emissions data, and instrumentation for ambient monitoring to determine the effect emissions from the stationary source or facility may have, or are having, on the air quality in any area affected by the stationary source or facility. This information is made available to the public through public processes outlined at IDAPA 58.01.01.209 (procedures for issuing permits) for permits to construct and 58.01.01.404 (procedures for issuing permits) for Tier II operating permits.

Additionally, the State is required to submit emissions data to the EPA for purposes of the National Emissions

[7] Letter to EPA from John Tippits, Director of Department of Environmental Quality ''SIP Elements for State Boards Under Clean Air Act Section 110(a)(1)–(2). January 3, 2017.

Inventory (NEI). The NEI is the EPA's central repository for air emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.*

Idaho's SIP and practices are adequate for the stationary source monitoring systems related to the 2012 $PM_{2.5}$ NAAQS. The statutes and rules provide Idaho DEQ with the ability to monitor stationary source emissions for compliance purposes and make data publicly available. Based on the analysis above, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2012 $PM_{2.5}$ NAAQS.

110(a)(2)(G): Emergency Episodes

CAA section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including adequate contingency plans to implement the emergency episode provisions in their SIPs.

State submittal: The Idaho submittal cites Idaho Code 39–112 which provides emergency order authority comparable to that in CAA section 303. In addition, the submittal cites the Idaho Air Pollution Emergency Rules (IDAPA 58.01.01.550–562).

EPA analysis: CAA section 303 provides authority to the EPA Administrator to restrain any source from causing or contributing to emissions which present an ''imminent and substantial endangerment to public health or welfare, or the environment.'' We find that Idaho Code Section 112 provides the Idaho DEQ Director with comparable authority.

The Idaho air pollution emergency rules at IDAPA 58.01.01.550–562 were previously approved by the EPA on January 16, 2003 (68 FR 2217). Idaho's air pollution emergency rules include $PM_{2.5}$, establish stages of episode criteria, provide for public announcement whenever any episode stage has been determined to exist, and specify emission control actions to be taken at each episode stage, consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51 subpart H (prevention of air pollution emergency episodes, sections 51.150 through 51.153) for particulate matter. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2012 $PM_{2.5}$ NAAQS.

110(a)(2)(H): Future SIP Revisions

CAA section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

State submittal: The Idaho submittal refers to Idaho Code Sections 39–105(2) and (3)(d) which provide Idaho DEQ with broad authority to revise rules, in accordance with Idaho administrative procedures for rulemaking, to meet national ambient air quality standards as incorporated by reference in IDAPA 58.01.01.107. The Idaho submittal also refers to IDAPA 58.01.01.575 through 587 which establish and define acceptable ambient concentrations consistent with established criteria.

EPA analysis: We find that Idaho has adequate authority to regularly update the SIP to take into account revisions of the NAAQS and other related regulatory changes. In practice, Idaho regularly updates the SIP for purposes of NAAQS revisions and other related regulatory changes. We most recently approved revisions to the Idaho SIP on May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). Idaho has incorporated by reference the 2012 $PM_{2.5}$ NAAQS into the Idaho SIP. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 2012 $PM_{2.5}$ NAAQS.

110(a)(2)(I): Nonattainment Area Plan Revision Under Part D

There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but are rather due at the time of the nonattainment area plan requirements pursuant to section 172 and the various pollutant specific subparts 2–5 of part D. These requirements are: (i) Submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by CAA section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment NSR or CAA section 110(a)(2)(I).

110(a)(2)(J): Consultation With Government Officials

CAA section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to section 121. CAA section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

State submittal: The Idaho submittal refers to laws and regulations relating to public participation processes for SIP revisions and permitting programs. The submittal refers to IDAPA 58.01.01.209, 364, and 404 which provide for public processes related to new source construction permits and operating permits. The submittal also refers to Idaho Code Section 39–105(3)(c) which promotes outreach with local governments and Idaho Code Section 39–129 which provides authority for Idaho DEQ to enter into agreements with local governments. In addition, the Idaho submittal references the Idaho transportation conformity rules and regional haze rules which provide for consultation processes. With regard to public notification, the Idaho submittal states that Idaho DEQ submits information to EPA's AIRNOW program and provides daily air quality index scores for many locations throughout Idaho. Finally, with regard to PSD, the submittal references the Idaho rules for major source permitting at IDAPA 58.01.01.200 through 223, including PSD requirements for sources in attainment and unclassifiable areas.

EPA analysis: The Idaho SIP includes specific provisions for consulting with

local governments and Federal Land Managers as specified in CAA section 121, including the Idaho rules for major source PSD permitting. The EPA most recently approved Idaho permitting rules at IDAPA 58.01.01.209 and 58.01.01.404, which provide opportunity and procedures for public comment and notice to appropriate federal, state and local agencies, on November 26, 2010 (75 FR 47530). We most recently approved Idaho's rules that define transportation conformity consultation on April 12, 2001 (66 FR 18873), and Idaho's regional haze rules on June 9, 2011 (76 FR 33651). In practice, Idaho DEQ routinely coordinates with local governments, states, Federal Land Managers and other stakeholders on air quality issues including permitting action, transportation conformity, and regional haze. Therefore, we are proposing to find that the Idaho SIP meets the requirements of CAA section 110(a)(2)(J) for consultation with government officials for the 2012 $PM_{2.5}$ NAAQS.

CAA section 110(a)(2)(J) also requires the public be notified if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. The EPA calculates an air quality index for five major air pollutants regulated by the CAA: Ground-level ozone, particulate matter, carbon monoxide, sulfur dioxide, and nitrogen dioxide. The EPA AIRNOW program provides this air quality index daily to the public, including health effects and actions members of the public can take to reduce air pollution. Idaho actively participates and submits information to the AIRNOW program, in addition to the EPA's Enviroflash Air Quality Alert program. Idaho DEQ also provides the daily air quality index to the public on the DEQ Web site at *http://www.deq.idaho.gov/air/aqindex.cfm,* as well as measures that can be taken to prevent exceedances. Therefore, we are proposing to find that the Idaho SIP meets the requirements of CAA section 110(a)(2)(J) for public notification for the 2012 $PM_{2.5}$ NAAQS.

Turning to the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C) with respect to permitting. The EPA most recently approved revisions to Idaho's PSD program on May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). Idaho's SIP-approved PSD program implements the 2012 $PM_{2.5}$ NAAQS and incorporates by reference the federal PSD program regulations at 40 CFR 52.21 as of July 1, 2015. We believe that our proposed approval of element 110(a)(2)(J) is not affected by recent court vacaturs of EPA PSD implementing regulations. Please see our discussion at section 110(a)(2)(C). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(J) with respect to PSD for the 2012 $PM_{2.5}$ NAAQS.

With regard to the applicable requirements for visibility protection, the EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new applicable requirement relating to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective. Based on the above analysis, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2012 $PM_{2.5}$ NAAQS.

110(a)(2)(K): Air Quality and Modeling/Data

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

State submittal: The Idaho submittal states that air quality modeling is conducted during development of revisions to the SIP, as appropriate for Idaho to demonstrate attainment with required air quality standards. Idaho cites IDAPA 58.01.01.202.02 and IDAPA 58.01.01.402.03 which address permit to construct and Tier II operating permit application procedures and modeling requirements for estimating ambient concentrations, respectively. Modeling is also addressed in Idaho's source permitting process as discussed at section 110(a)(2)(A) above. Estimates of ambient concentrations are based on requirements specified in 40 CFR part 51, Appendix W (Guidelines on Air Quality Models) which is incorporated by reference at IDAPA 58.01.01.107.

EPA analysis: We most recently approved IDAPA 58.01.01.107 (incorporations by reference) on May 12, 2017 (82 FR 22083). This rule incorporates by reference the following EPA regulations: Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR part 51; National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50; Approval and Promulgation of Implementation Plans, 40 CFR part 52; Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and Ambient Air Quality Surveillance, 40 CFR part 58 revised as of July 1, 2015. Idaho has incorporated by reference the 2012 $PM_{2.5}$ NAAQS into Idaho regulations. Idaho models estimates of ambient concentrations based on 40 CFR part 51 Appendix W (Guidelines on Air Quality Models). To cite an example of a SIP supported by substantial modeling, the EPA approved the PM_{10} Second Ten-Year Maintenance Plan for Northern Ada County/Boise Idaho Area on October 2, 2014 (79 FR 59435). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2012 $PM_{2.5}$ NAAQS.

110(a)(2)(L): Permitting Fees

CAA section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit, until such time as the SIP fee requirement is superseded by the EPA's approval of the state's title V operating permit program.

State submittal: The Idaho submittal refers to IDAPA 58.01.01.387–397, which set the requirements for the annual registration of Tier I (title V) sources and the annual assessment and payment of fees to support the Tier I permitting program. The EPA approved Idaho's title V permitting program on October 4, 2001 (66 FR 50574). The submittal also references IDAPA 58.01.01.407–409 which set the requirements for Tier II operating permit processing fees and usage.

EPA analysis: We approved Idaho's title V program on October 4, 2001 (66 FR 50574) with an effective date of November 5, 2001. While Idaho's operating permit program is not formally approved into the State's SIP, it is a legal mechanism the State can use to ensure that Idaho DEQ has sufficient resources to support the air program, consistent with the requirements of the SIP. Before the EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Idaho's title V program included a demonstration the State will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). Idaho regulations require permitting fees for major sources subject to new source

review, as specified at IDAPA 58.01.01.224–227. Therefore, we are proposing to conclude that Idaho has satisfied the requirements of CAA section 110(a)(2)(L) for the 2012 $PM_{2.5}$ NAAQS.

110(a)(2)(M): Consultation/Participation by Affected Local Entities

CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

State submittal: The Idaho submittal references IDAPA 58.01.01.209, 364 and 404 which provide for the public processes related to developing and issuing air quality permits. In addition, the submittal references the transportation conformity consultation and public processes at IDAPA 58.01.01.563–574. Finally, the submittal references the consultation and participation process outlined in 40 CFR 51.102, incorporated by reference at IDAPA 58.01.01.107.

EPA analysis: The EPA most recently approved IDAPA 58.01.01.107 (incorporations by reference), which incorporates by reference EPA regulations at 40 CFR part 51—Requirements for Preparation, Adoption, and Submittal of Implementation Plans on May 12, 2017 (82 FR 22083). In addition, we most recently approved Idaho permitting rules at IDAPA 58.01.01.209 and 58.01.01.404, which provide opportunity and procedures for public comment and notice to appropriate federal, state and local agencies, on November 26, 2010 (75 FR 47530). Finally, we approved the State rules that define transportation conformity consultation on April 12, 2001 (66 FR 18873). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2012 $PM_{2.5}$ NAAQS.

V. Proposed Action

The EPA is proposing to find that the Idaho SIP meets the following CAA section 110(a)(2) infrastructure elements for the 2012 $PM_{2.5}$ NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This action is being taken under section 110 of the CAA.

VI. Statutory and Executive Orders Review

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: August 28, 2017.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2017–19346 Filed 9–11–17; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 82, No. 175
Tuesday, September 12, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Improving Customer Service

AGENCY: Office of the Secretary, USDA.

ACTION: Request for Information (RFI).

SUMMARY: Consistent with Executive Order 13781, ''Comprehensive Plan for Reorganizing the Executive Branch,'' and using the authority of the Secretary to reorganize the Department under section 4(a) of Reorganization Plan No. 2 of 1953 the U.S. Department of Agriculture (USDA) is soliciting public comment on the proposed reorganization announced by Secretary Perdue on September 7, 2017. The proposed reorganizations follow a previous reorganization announced on May 11, 2017.

DATES: Comments and information are requested on or before October 7, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this notice. All submissions must refer to ''Improving Customer Service'' to ensure proper delivery.

- *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* USDA strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, and ensures timely receipt by USDA. Commenters should follow the instructions provided on that site to submit comments electronically.
- *Submission of Comments by Mail, Hand delivery, or Courier.* Paper, disk, or CD–ROM submissions should be submitted to the Office of Budget and Program Analysis, USDA, Jamie L. Whitten Building, Room 101–A, 1400 Independence Ave. SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Donald Bice, Telephone Number: (202) 720–3291.

SUPPLEMENTARY INFORMATION: USDA is committed to operating efficiently, effectively, and with integrity, and minimizing the burdens on individuals businesses, and communities for participation in and compliance with USDA programs. USDA works to support the American agricultural economy to strengthen rural communities; to protect and conserve our natural resources; and to provide a safe, sufficient, and nutritious food supply for the American people. The Department's wide range of programs and responsibilities touches the lives of every American every day.

I. Executive Orders 13781

Executive Order 13781, ''Comprehensive Plan for Reorganizing the Executive Branch'', is intended to improve the efficiency, effectiveness, and accountability of the executive branch. The principles in the Executive Order provide the basis for taking actions to enhance and strengthen the delivery of USDA programs. The Department will continue to work within the Administration on the government-wide reform plan and additional reform efforts.

II. Reorganization Actions

On September 7, 2017, Secretary Perdue announced his intent to take actions to strengthen customer service and improve efficiencies at USDA by taking the following actions:

- Merging the Center for Nutrition and Policy Promotion into the Food and Nutrition Service;
- Consolidating the Grain Inspection, Packers, and Stockyards Administration into the Agricultural Marketing Service (AMS);
- Realigning the Farm Service Agency (FSA) Warehouse function and the International Food Commodity Procurement program into AMS;
- Moving the Codex Alimentarius program from the Food Safety and Inspection Service into the Undersecretary for Trade and Foreign Agricultural Affairs;
- Realigning the Office of Pesticide Management Policy out of the Agricultural Research Service and into the Office of the Chief Economist;
- Establishing the Office of Partnerships and Public Engagement through the merger of the Office of Advocacy and Outreach, the Office of Tribal Relations, the Center for Faith Based and Neighborhood Partnerships, and the Military Veterans Liaison;
- Creating an Office of Innovation within Rural Development; and
- Consolidating mission support activities, including information technology, finance, property, procurement, and human resources, at the mission area level. (*https://www.usda.gov/media/press-releases*)

III. Request for Information

USDA is seeking public comment on the actions identified in the September 7, 2017, announcement.

USDA notes that this notice is issued solely for information and program-planning purposes. While responses to this notice do not bind USDA to any further actions, all submissions will be reviewed by the appropriate program office, and made publicly available on *http://www.regulations.gov.*

Dated: September 7, 2017.

Donald Bice,

Acting Deputy Assistant Secretary for Administration.

[FR Doc. 2017–19337 Filed 9–11–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0046]

Oral Rabies Vaccine Trial; Availability of a Supplement to an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a supplement to an environmental assessment and finding of no significant impact relative to an oral rabies vaccination field trial in New Hampshire, New York, Ohio, Vermont, and West Virginia. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Chipman, Rabies Program Coordinator, Wildlife Services, APHIS, 59 Chennell Drive, Suite 7, Concord, NH 03301; (603) 223–9623. To obtain copies of the supplement to the environmental assessment and the finding of no significant impact, contact Ms. Beth Kabert, Environmental Coordinator, Wildlife Services, 140–C Locust Grove Road, Pittstown, NJ 08867; (908) 735–5654, fax (908) 735–0821, email: *beth.e.kabert@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The Wildlife Services (WS) program in the Animal and Plant Health Inspection Service (APHIS) cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing conflicts between wildlife and human health and safety, agriculture, property, and natural resources. Wildlife-borne diseases that can affect domestic animals and humans are among the types of conflicts that APHIS–WS addresses. Wildlife is the dominant reservoir of rabies in the United States.

On July 17, 2017, we published in the **Federal Register** (82 FR 32676–32677, Docket No. APHIS–2017–0046) a notice [1] in which we announced the availability, for public review and comment, of a supplement to an environmental assessment (EA) that examined the potential environmental impacts associated with the proposed field trial to test the safety and efficacy of an experimental oral rabies vaccine (ORV) for wildlife in New Hampshire, New York, Ohio, Vermont, and West Virginia. In addition, the supplement analyzed the geographic shift of the ORV zone in Ohio and the addition of 17 counties in West Virginia so that baits can be applied to the western edge of the ORV zone in West Virginia.

We solicited comments on the EA for 30 days ending August 16, 2017. We did not receive any comments.

In this document, we are advising the public of our finding of no significant impact (FONSI) relative to the ORV field trial in New Hampshire, New York, Ohio, Vermont, and West Virginia. The finding, which is based on the EA and the 2013, 2015, and 2017 supplements to the EA, reflects our determination that the distribution of this experimental wildlife rabies vaccine will not have a significant impact on the quality of the human environment.

The 2017 supplement to the EA and the FONSI may be viewed on the APHIS Web site at *http://www.aphis.usda.gov/wildlifedamage/nepa* and on the *Regulations.gov* Web site (see footnote 1). Copies of the 2017 supplement to the EA and the FONSI are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained as described under **FOR FURTHER INFORMATION CONTACT**.

The 2017 supplement to the EA and the FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 6th day of September 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–19227 Filed 9–11–17; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, the EA, and the FONSI, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0046.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2017–0072]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Bees and Related Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the importation of bees and related articles into the United States.

DATES: We will consider all comments that we receive on or before November 13, 2017.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0072.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2017–0072, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2017-0072* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of bees and related articles, contact Dr. Colin Stewart, Senior Entomologist, Pest Permit Evaluations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2038, email: *Colin.D.Stewart@aphis.usda.gov.* For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Bees and Related Articles.

OMB Control Number: 0579–0207.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States.

Under the Honeybee Act (7 U.S.C. 281–286), the Secretary is authorized to prohibit or restrict the importation of honeybees and honeybee semen to prevent the introduction into the United States of diseases and parasites harmful to honeybees and of undesirable species such as the African honey bee. This authority has been delegated to the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

The establishment of certain bee diseases, parasites, or undesirable species and subspecies of honeybees in

the United States could cause substantial reductions in pollination by bees. These reductions could cause serious damage to crops and other plants and result in substantial financial losses to American agriculture.

Regulations for the importation of honeybees and honeybee semen and regulations to prevent the introduction of exotic bee diseases and parasites through the importation of bees other than honeybees, certain beekeeping products, and used beekeeping equipment are contained in 7 CFR part 322, ''Bees, Beekeeping Byproducts, and Beekeeping Equipment.'' These regulations require the use of certain information collection activities, including an application for a permit, request for risk assessment, request for facility approval, written agreement to permit conditions, emergency action notification, appealing the denial of permit applications or revocation of permits, interstate transit documentation, packaging and labeling, recordkeeping for containment facilities, notices of arrival for shipments from approved regions, transit shipments, port of entry inspections, and notification of escaped organisms.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.24 hours per response.

Respondents: Importers, exporters, and shippers of bees and related articles; foreign governments; and containment facilities.

Estimated annual number of respondents: 18.

Estimated annual number of responses per respondent: 12.

Estimated annual number of responses: 210.

Estimated total annual burden on respondents: 50 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 6th day of September 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2017–19280 Filed 9–11–17; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Housing Service, Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces Rural Development's intention to request a revision for a currently approved information collection in support of loan programs administered by the Rural Housing Service, Business-Cooperative Service, and Rural Utilities Service.

DATES: Comments on this notice must be received by November 13, 2017 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Karen R. Smith, Accountant, National Financial and Accounting Operations Center (NFAOC), Internal Control and Initiatives Staff, U.S. Department of Agriculture, 4300 Goodfellow Blvd., Bldg. 104 FC–365, St. Louis, MO 63120, Telephone: (314) 457–4295.

SUPPLEMENTARY INFORMATION:

Title: Form RD 1951–65, Customer Initiated Payments (CIP) Enrollment Form; Form RD 1951–66, FedWire Worksheet, and Form RD 3550–28, Authorization Agreement for Preauthorized Payments.

OMB Number: 0575–0184.

Expiration Date of Approval: January 31, 2018.

Type of Request: Revision of a currently approved information collection.

Abstract: Rural Development uses electronic methods (Customer Initiated Payments [CIP], FedWire, and Preauthorized Debits [PAD]) for receiving and processing loan payments and collections. These electronic collection methods provide a means for Rural Development borrowers to transmit loan payments from their financial institution (FI) accounts to Rural Development's Treasury Account and receive credit for their payments.

To administer these electronic loan collection methods, Rural Development collects the borrower's FI routing information (routing information includes the FI routing number and the borrower's account number). Rural Development uses Agency approved forms for collecting bank routing information for CIP, FedWire, and PAD.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .33 hours per response. Each Rural Development borrower who elects to participate in electronic loan payments will only prepare one response for the life of their loan unless they change financial institutions or accounts.

Respondents: Business or other for-profit; Not-for-profit institutions; and State, Local, or Tribal Government.

Estimated Number of Respondents: 8660.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 8,660.

Estimated Total Annual Burden on Respondents: 4,230 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, at (202) 692–0040.

Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents.

Comments should be submitted to Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW.,

Washington, DC 20250–0742. All responses to this notice will be summarized, included in the request for Office of Management and Budget (OMB) approval, and will become a matter of public record.

Dated: August 31, 2017.

Richard A. Davis,

Administrator, Rural Housing Service.

[FR Doc. 2017–19175 Filed 9–11–17; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the South Dakota Advisory Committee to the Commission will convene at 3:00 p.m. (CDT) on Thursday, September 28, 2017, via teleconference. The purpose of the meeting is to discuss next steps after the subtle racism briefing in March 2017.

DATES: Thursday, September 28, 2017, at 3:00 p.m. (CDT)

ADDRESSES: To be held via teleconference:

Conference Call Toll-Free Number: 1–877–856–1956, Conference ID: 8652759.

TDD: Dial Federal Relay Service 1–800–977–8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, *ebohor@usccr.gov,* 303–866–1040.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–877–856–1956; Conference ID: 8652759. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–977–8339 and provide the FRS operator with the Conference Call Toll-Free Number: 1–877–856–1956, Conference ID: 8652759. Members of the public are invited to submit written comments; the comments must be received in the regional office by Monday, October 30, 2017. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=274* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda

- Welcome and Roll-call
- Brief update on Commission and Regional Activities
- Discuss next steps after briefing held in Aberdeen, SD, on March 24, 2017, Dr. Richard Braunstein, Chair, South Dakota Advisory Committee
- Discuss Transcript, Sample Advisory Memorandums, Yankton Sioux Tribe Chairman testimony
- Adjourn

Dated: September 7, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–19260 Filed 9–11–17; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–135–2017]

Foreign-Trade Zone 44—Morris County, New Jersey; Application for Subzone; Ekornes Inc.; Somerset, New Jersey

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the New Jersey Department of State, grantee of FTZ 44, requesting subzone status for the facility of Ekornes Inc. (Ekornes), located in Somerset, New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on September 7, 2017.

The proposed subzone (2.25 acres) is located at 615 Pierce Street, Somerset, New Jersey. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 44.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 23, 2017. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 6, 2017.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: September 7, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–19297 Filed 9–11–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–20–2017]

Foreign-Trade Zone (FTZ) 43—Battle Creek, Michigan; Authorization of Production Activity; Mead Johnson & Company, LLC, dba Mead Johnson Nutritional; Subzone 43B; (Infant Formula/Nutritional Products); Zeeland, Michigan

On March 27, 2017, Mead Johnson & Company, LLC, dba Mead Johnson

Nutritional, submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 43B, in Zeeland, Michigan.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 16786, April 6, 2017). On July 25, 2017, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: September 5, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–19295 Filed 9–11–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–19–2017]

Foreign-Trade Zone (FTZ) 7—Mayaguez, Puerto Rico; Authorization of Production Activity; MSD International GMBH (Puerto Rico Branch) LLC (Pharmaceuticals); Las Piedras, Puerto Rico

On March 28, 2017, MSD International GMBH (Puerto Rico Branch) LLC submitted a notification of proposed production activity to the FTZ Board within Subzone 7G, in Las Piedras, Puerto Rico.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 16159, April 3, 2017). On July 26, 2017, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: September 6, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–19298 Filed 9–11–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results, Preliminary Determination of No Shipments, and Partial Rescission of the Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department preliminarily determines that the application of facts available is warranted for mandatory respondent GODACO Seafood Joint Stock Company (GODACO). In addition, the Department preliminarily determines that the application of facts available with an adverse inference is warranted for GODACO because it has not cooperated to the best of its ability. However, the Department preliminarily determines that GODACO qualifies for a separate rate for its exports of subject merchandise to the United States during the period of review (POR) August 1, 2015, through July 31, 2016. The Department also preliminary determines that mandatory respondent Golden Quality Seafood Corporation (Golden Quality) does not qualify for a separate rate and is, therefore, considered a part of the Vietnam-Wide [1] Entity. If these preliminary results are adopted in the final results, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Effective September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone 202–482–2243.

SUPPLEMENTARY INFORMATION:

Background

On October 14, 2016, the Department initiated the 13th administrative review of the antidumping duty order on frozen fish fillets (fish fillets) from Vietnam for the period August 1, 2015, through July 31, 2016.[2] On April 11, 2017, the Department fully extended the deadline for issuing the preliminary results by 120 days.[3] The revised deadline for the preliminary results of this administrative review is August 31, 2017.

Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*) and *Pangasius Micronemus.* These products are classifiable under tariff article code 0304.62.0020 (Frozen Fish Fillets of the species *Pangasius,* including basa and tra), and may enter under tariff article codes 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[4] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.[5]

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the

[1] The Vietnam-wide entity also includes Thuan An Production Trading and Service Co., Ltd., and Anvifish Joint Stock Company.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 71061 (October 14, 2016); *see* also Appendix I for the complete list of all companies upon which the Department initiated an administrative review.

[3] *See* Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of 2015–2016 Administrative Review, dated April 11, 2017.

[4] Until June 30, 2004, these products were classifiable under HTSUS 0304.20.6030, 0304.20.6096, 0304.20.6043 and 0304.20.6057. From July 1, 2004, until December 31, 2006, these products were classifiable under HTSUS 0304.20.6033. From January 1, 2007, until December 31, 2011, these products were classifiable under HTSUS 0304.29.6033. On March 2, 2011, the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection (CBP) that the subject merchandise may enter under: 1604.19.2000 and 1604 19.3000, which were changed to 1604.19.2100 and 1604.19.3100 on January 1, 2012. On January 1, 2012, the Department added the following HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

[5] For a complete description of the scope of the order, *see* Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Decision Memorandum for the Preliminary Results, Preliminary Determination of No Shipments, and Partial Rescission of the 2015–2016 Antidumping Duty Administrative Review, (Preliminary Decision Memorandum) at ''Scope of the Order'', dated concurrently with and hereby adopted by this notice.

notice of initiation. Between December 30, 2015 and January 4, 2016, we received timely withdrawal of review requests for 52 companies from the petitioners,[6] Bien Dong Seafood Co., Ltd (Bien Dong), and Vinh Hoan Corporation (Vinh Hoan).[7] Of these 52 companies, 34 do not have any other outstanding review requests. Therefore, in accordance with 19 CFR 351.213(d)(1), the Department is rescinding this review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam with respect to these 34 companies.[8] The review will continue with respect to the other firms for which a review was requested and initiated.

Preliminary Determination of No Shipments

The Department has preliminarily determined that Saigon-Mekong Fishery Co., Ltd. (SAMEFICO), and QVD [9] had no shipments during the POR. Consistent with our practice in non-market economy (NME) cases, we will not rescind the review, in part, in this circumstance, but rather, complete the review with respect to these companies and issue appropriate instructions to CBP based on the final results of the review.[10]

Methodology

The Department is conducting this review in accordance with sections 751(a)(1)(B) and 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). Vietnam is an NME within the meaning of section 771(18) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist for the period August 1, 2015, through July 31, 2016:

Exporter	Weighted-average margin (dollars/kilogram) [11]
GODACO Seafood Joint Stock Company	** 2.39
Cadovimex II Seafood Import-Export and Processing Joint Stock * Company	2.39
Can Tho Import-Export Joint Stock Company, aka CASEAMEX *	2.39
Cuu Long Fish Joint Stock Company *	2.39
Dai Thanh Seafoods Company Limited *	2.39
Green Farms Seafood Joint Stock Company *	2.39
Hoang Long Seafood Processing Co., Ltd.*	2.39
Hung Vuong Group *	2.39
NTSF Seafoods Joint Stock Company *	2.39
Vinh Quang Fisheries Corporation *	2.39

* These companies are separate rate respondents not individually examined.
** Although we preliminarily find GODACO to be eligible for a separate rate, its margin is based on adverse facts available (AFA).

Disclosure, Public Comment & Opportunity To Request a Hearing

Normally, the Department discloses to interested parties the calculations performed in connection with the preliminary results within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because the Department preliminarily determined that Golden Quality is part of the Vietnam-wide entity, and GODACO's rate is based entirely on AFA, there are no calculations to disclose.

Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[12] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.[13] Parties who submit arguments are requested to submit with the argument: (a) A statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[14] Parties submitting briefs should do so pursuant to the Department's electronic filing system, ACCESS.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective

[6] Catfish Farmers of America and individual U.S. catfish processors America's Catch, Alabama Catfish Inc. dba Harvest Select Catfish, Inc., Heartland Catfish Company, Magnolia Processing, Inc. dba Pride of the Pond, and Simmons Farm Raised Catfish, Inc. (hereinafter, the petitioners).

[7] *See* Bien Dong Seafood Co., Ltd., submission dated January 12, 2017; the petitioners' submission dated December 15, 2016, and January 12, 2017; and Vinh Hoan Corporation submission, dated December 15, 2016.

[8] *See* Appendix II for a full list of rescinded companies.

[9] These companies include QVD Food Co., Ltd., QVD Dong Thap Food Co., Ltd. and Thuan Hung Co., Ltd.

[10] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–65695 (October 24, 2011).

[11] In the third administrative review of this order, the Department determined that it would calculate per-unit assessment and cash deposit rates for all future reviews. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479 (March 24, 2008).

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d)(1)–(2).

[14] *See* 19 CFR 351.309(c)(2), (d)(2).

case and rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined. *See* 19 CFR 351.310(d). Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[15] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. With regard to the companies the Department rescinded upon, the Department intends to issue assessment instructions to CBP 15 days after the publication date of this partial rescission of this review.

For any individually examined respondent whose calculated weighted average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of this review, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[16] Where either a respondent's weighted average dumping margin is zero or *de minimis,* or an importer- (or customer-) specific *ad valorem* is zero or *de minimis,* the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[17]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Vietnam and non-Vietnam exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Vietnam exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the Vietnam-wide entity; and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporter that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This preliminary determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

Appendix II

(1) An My Fish Joint Stock Company (also known as Anmyfish or Anmyfishco)
(2) An Phat Seafood Co. Ltd. (also known as An Phat Import-Export Seafood Co., Ltd.)
(3) An Phu Seafood Corporation (also known as ASEAFOOD or An Phu Seafood Corp.)
(4) Asia Commerce Fisheries Joint Stock Company (also known as Acomfish JSC or Acomfish)
(5) Basa Joint Stock Company (BASACO)
(6) Ben Tre Aquaproduct Import and Export Joint Stock Company (also known as Bentre Aquaproduct, Bentre Aquaproduct Import & Export Joint Stock Company or Aquatex Bentre)
(7) Bentre Forestry and Aquaproduct Import Export Joint Stock Company (also known as (Ben Tre Forestry and Aquaproduct Import-Export Company or Ben Tre Forestry Aquaproduct Import- Export Company or Ben Tre Frozen Aquaproduct Export Company or Faquimex)
(8) Binh An Seafood Joint Stock Company (also known as Binh An or Binh An Seafood Joint Stock Co.)
(9) C.P. Vietnam Corporation
(10) Cafatex Corporation (also known as Cafatex)
(11) Can Tho Animal Fishery Products Processing Export Enterprise (also known as Cafatex)
(12) Cuu Long Fish Import-Export Corporation (also known as CL Panga Fish)
(13) Da Nang Seaproducts Import-Export Corporation (also known as Da Nang)
(14) East Sea Seafoods LLC (also known as ESS LLC, ESS, East Sea Seafoods Limited Liability Company, East Sea Seafoods Joint Venture Co., Ltd.)
(15) Fatifish Company Limited (also known as FATIFISH)
(16) Hai Huong Seafood Joint Stock Company (also known as HHFish, HH Fish, or Hai Huong Seafood)
(17) Hiep Thanh Seafood Joint Stock Company (also known as Hiep Thanh or Hiep Thanh Seafood Joint Stock Co.)
(18) Hoa Phat Seafood Import-Export and Processing J.S.C. (also known as HOPAFISH or Hoa Phat Seafood Import-Export and Processing Joint Stock Company)
(19) Hung Vuong Seafood Joint Stock Company
(20) Lian Heng Investment Co., Ltd. (also known as Lian Heng or Lian Heng Investment)
(21) Lian Heng Trading Co., Ltd. (also known as Lian Heng or Lian Heng Trading)
(22) Nam Viet Corporation (also known as NAVICO)
(23) Ngoc Ha Co. Ltd. Food Processing and Trading (also known as Ngoc Ha or Ngoc Ha Co., Ltd. Foods Processing and Trading)
(24) Nha Trang Seafoods, Inc. (also known as Nha Trang Seafoods-F89, Nha Trang Seafoods, or Nha Trang Seaproduct Company)

[15] *See* 19 CFR 351.212(b).
[16] *See* 19 CFR 351.212(b)(1).
[17] *See* 19 CFR 351.106(c)(2).

(25) Quang Minh Seafood Company Limited (also known as Quang Minh, Quang Minh Seafood Co., Ltd., or Quang Minh Seafood Co.)
(26) Seafood Joint Stock Company No. 4 Branch Dongtam Fisheries Processing Company (also known as DOTASEAFOODCO or Seafood Joint Stock Company No. 4—Branch Dong Tam Fisheries Processing Company)
(27) Sunrise Corporation
(28) TG Fishery Holdings Corporation (also known as TG)
(29) To Chau Joint Stock Company (also known as TOCHAU)
(30) Van Duc Food Export Joint Stock Company
(31) Van Duc Tien Giang Food Export Company
(32) Viet Hai Seafood Company Limited (also known as Viet Hai or Vietnam Fish-One Co., Ltd.)
(33) Viet Phu Foods & Fish Co., Ltd.
(34) Viet Phu Foods and Fish Corporation (also known as Vietphu, Viet Phu, Viet Phu Food and Fish Corporation, or Viet Phu Food & Fish Corporation)

[FR Doc. 2017–19288 Filed 9–11–17; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–845, A–533–873, A–475–838, A–580–892, A–570–058, A–441–801]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Frances Veith at (202) 482–4295 (Federal Republic of Germany (Germany)), Omar Qureshi at (202) 482–5307 (India), Carrie Bethea at (202) 482–1491 (Italy), Annathea Cook at (202) 482–0250 (Republic of Korea (Korea)), Paul Stolz at (202) 482–4474 (People's Republic of China (PRC)), and Amanda Brings at (202) 482–3927 (Switzerland), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 2017, the Department of Commerce (the Department) initiated less-than-fair-value (LTFV) investigations of imports of certain cold-drawn mechanical tubing of carbon and alloy steel from Germany, India, Italy, Korea, the PRC, and Switzerland.[1] Currently, the preliminary determinations are due no later than September 26, 2017.

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a LTFV investigation within 140 days after the date on which the Department initiated the investigation. However, section 733(c)(1)) of the Act permits the Department to postpone the preliminary determination until no later than 190 days after the date on which the Department initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) the Department concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. The Department will grant the request unless it finds compelling reasons to deny the request. *See* 19 CFR 351.205(e).

On September 1, 2017, ArcelorMittal Tubular Products; Michigan Seamless Tube, LLC; PTC Alliance Corp.; Webco Industries, Inc.; and Zekelman Industries, Inc. (collectively, the petitioners) submitted timely requests pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e) to postpone the preliminary determinations in these LTFV investigations.[2] The petitioners stated that they request postponement because the Department is still gathering data and questionnaire responses from the foreign producers in these investigations, and additional time is necessary for the Department and interested parties to fully and properly analyze all questionnaire responses.

For the reasons stated above and because there are no compelling reasons to deny the request, the Department, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations by 50 days (*i.e.,* 190 days after the date on which these investigations were initiated). As a result, the Department will issue its preliminary determinations no later than November 15, 2017. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of publication of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: September 6, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–19291 Filed 9–11–17; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 22491 (May 16, 2017).

[2] *See* letters from the petitioners, ''Cold Drawn Mechanical Tubing from China, Germany, India, Italy, Korea and Switzerland—Petitioners' Request to Postpone the Antidumping Duty Preliminary Determinations,'' dated September 1, 2017.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–868]

Large Residential Washers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On March 6, 2017, the Department of Commerce (the Department) published the preliminary results of the third administrative review of the antidumping duty (AD) order on large residential washers (LRWs) from the Republic of Korea (Korea). The period of review (POR) is February 1, 2015, to January 31, 2016. Based on our analysis of the comments received and our verification findings, we made certain changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the respondent, LG Electronics, Inc. (LGE), is listed below in the section entitled ''Final Results of the Review.''

DATES: Applicable September 12, 2017.

FOR FURTHER INFORMATION CONTACT: David Goldberger or William Miller, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–3906, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers one producer/exporter of the subject merchandise: LGE. On March 6, 2017, the Department published the *Preliminary Results*.[1] In April and June 2017, the Department verified the sales and cost of production data, respectively, reported by LGE, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).

In June and July 2017, respectively, we received sales and cost case briefs from Whirlpool Corporation (the petitioner) and LGE.

Scope of the Order

The products covered by the order are all large residential washers and certain subassemblies thereof from Korea. The products are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[2]

Analysis of Comments Received

All issues raised in the case briefs by parties are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum. Parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov;* the Issues and Decision Memorandum is also available to all parties in the Central Records Unit, Room B8024, of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on comments received from interested parties regarding our *Preliminary Results* and our findings at verification, we made certain changes to the preliminary weighted-average dumping margin calculations for LGE. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Issues and Decision Memorandum.

Final Results of the Review

We are assigning the following weighted-average dumping margin to LGE:

Manufacturer/exporter	Weighted-average dumping margin (percent)
LG Electronics, Inc	0.00

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), the Department has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

We have calculated a zero margin for LGE in the final results of this review; therefore, we intend to instruct CBP to liquidate without regard to antidumping duties all shipments of subject merchandise manufactured and exported by LGE, entered or withdrawn from warehouse, for consumption, during the POR. The Department's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by LGE, for which the company did not know that its merchandise was destined for the United States.[3] In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than fair-value (LTFV) investigation (*i.e.,* 11.80 percent),[4] if there is no rate for the intermediary company(ies) involved in the transaction who have their own individual weighted-average dumping margin in an already competed segment of this proceeding.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for LGE will be equal to the weighted-average dumping margin established in the final results of this administrative review (*i.e.,* zero); (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.80 percent, the all-others rate determined in the LTFV investigation.[5] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of

[1] *See Large Residential Washers from the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review; 2015–2016,* 82 FR 12536 (March 6, 2017) (*Preliminary Results*).

[2] A full description of the scope of the order is contained in Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Large Residential Washers from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) for a full discussion of this practice.

[4] *See Large Residential Washers from Mexico and the Republic of Korea: Antidumping Duty Orders,* 78 FR 11148, 11150 (February 15, 2013) (*Order*).

[5] *See Order,* 78 FR at 11150.

their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: September 5, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2017–19290 Filed 9–11–17; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–849, A–580–890, A–201–848, A–455–805]

Emulsion Styrene-Butadiene Rubber From Brazil, the Republic of Korea, Mexico, and Poland: Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC), the Department is issuing antidumping duty orders on emulsion styrene-butadiene rubber (ESB rubber) from Brazil, the Republic of Korea (Korea), Mexico, and Poland.

DATES: Applicable September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Drew Jackson at (202) 482–4406, (Brazil); Carrie Bethea at (202) 482–1491, (Korea); Julia Hancock, (202) 482–1394 (Mexico); Stephen Bailey at (202) 482–0193, (Poland), AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on July 19, 2017, the Department published affirmative final determinations in the less-than-fair-value (LTFV) investigations of ESB rubber from Brazil, Korea, Mexico, and Poland.[1] On September 1, 2017, the ITC notified the Department of its affirmative determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of ESB rubber from Brazil, Korea, Mexico, and Poland, and its determination that critical circumstances do not exist with respect to imports of subject merchandise from Korea subject to the Department's affirmative critical circumstances determination.[2]

For Mexico, on July 17, 2017, we received comments from Industrias Negromex S.A. de C.V. (Negromex), the sole mandatory respondent in the Mexico investigation, that we made ministerial errors in our final determination.[3] The allegations raised by Negromex in its comments do not result in a change to Negromex's margin from the final determination. As such, we are not amending Negromex's margin from the final determination.[4]

[1] *See Emulsion Styrene-Butadiene Rubber from Brazil: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 82 FR 33048 (July 19, 2017) (*Brazil Final*); *Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part,* 82 FR 33045 (July 19, 2017) (*Korea Final*); *Emulsion Styrene-Butadiene Rubber from Mexico: Final Affirmative Determination of Sales at Less Than Fair Value,* 82 FR 33062 (July 19, 2017) (*Mexico Final*); and *Emulsion Styrene-Butadiene Rubber from Poland: Final Affirmative Determination of Sales at Less Than Fair Value,* 82 FR 33061 (July 19, 2017) (*Poland Final*).

[2] *See* Letter to Gary Taverman, Acting Assistant Secretary of Commerce for Enforcement and Compliance, from Rhonda K. Schmidtlein, Chairman of the U.S. International Trade Commission, regarding emulsion styrene-butadiene rubber from Brazil, Korea, Mexico, and Poland (September 1, 2017) (ITC Letter).

[3] *See Mexico Final.*

[4] *See* Memorandum, ''Antidumping Duty Investigation of Emulsion Styrene-Butadiene Rubber from Mexico: Ministerial Error Allegations Memorandum,'' dated August 22, 2017.

Scope of the Orders

The products covered by these orders are cold-polymerized emulsion styrene-butadiene rubber. For a complete description of the scope of these orders, *see* the Appendix to this notice.

Antidumping Duty Orders

In accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified the Department of its final determinations in these investigations, in which it found that an industry in the United States is materially injured by reason of imports of ESB rubber from Brazil, Korea, Mexico, and Poland. The ITC also notified the Department of its determination that critical circumstances do not exist with respect to imports of ESB rubber from Korea subject to the Department's critical circumstances finding.[5] Therefore, in accordance with section 735(c)(2) of the Act, the Department is issuing these antidumping duty orders. Because the ITC determined that imports of ESB rubber from Brazil, Korea, Mexico, and Poland are materially injuring a U.S. industry, unliquidated entries of such merchandise from Brazil, Korea, Mexico, and Poland, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

As a result of the ITC's final determination, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of ESB rubber from Brazil, Korea, Mexico, and Poland. Antidumping duties will be assessed on unliquidated entries of ESB rubber from Brazil, Korea, Mexico, and Poland entered, or withdrawn from warehouse, for consumption on or after February 24, 2017, the date of publication of the preliminary determinations,[6] but will

[5] *See* ITC Letter.

[6] *See Emulsion Styrene-Butadiene Rubber from Brazil: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 82 FR 11538 (February 24, 2017) (*Brazil Preliminary Determination*); *Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures,* 82 FR 11536 (February 24, 2017) (*Korea Preliminary Determination*); *Emulsion Styrene-*

not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct CBP to continue to suspend liquidation on all relevant entries of ESB rubber from Brazil, Korea, Mexico, and Poland. These instructions suspending liquidation will remain in effect until further notice.

The Department will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the cash deposit rates listed below.[7] The relevant all-others rates apply to all producers or exporters not specifically listed, as appropriate.

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of ESB rubber from Brazil, Korea, Mexico, and Poland, the Department extended the four-month period to six months in each case.[8] In the underlying investigations, the Department published the preliminary determinations on February 24, 2017. Therefore, the extended period, beginning on the date of publication of the preliminary determination, ended on August 24, 2017. Furthermore, section 737(b) of the Act states that the collection of final, estimated cash deposits will begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, the Department will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of ESB rubber from Brazil, Korea, Mexico, and Poland entered, or withdrawn from warehouse, for consumption after August 24, 2017, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of subject merchandise from Korea, the Department will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 26, 2016 (*i.e.,* 90 days prior to the date of publication of the preliminary determinations), but before February 24, 2017, (*i.e.,* the date of publication of the preliminary determinations).

Estimated Weighted-Average Dumping Margins

The weighted-average antidumping duty margin percentages and cash deposit rates are as follows:

Exporter or producer	Weighted-average dumping margin (percent)
Brazil	
ARLANXEO Brasil S.A	19.61
All-Others	19.61
Korea	
LG Chem, Ltd	9.66
Daewoo International Corporation	** 44.30
Kumho Petrochemical Co, Ltd	** 44.30
All-Others	9.66
Mexico	
Industrias Negromex S.A. de C.V.—Planta Altamira (Negromex)	19.52
All-Others	19.52
Poland	
Synthos Dwory	25.43
All-Others	25.43

** (AFA).

This notice constitutes the antidumping duty orders with respect to ESB rubber from Brazil, Korea, Mexico, and Poland pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: September 6, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The products covered by these orders are cold-polymerized emulsion styrene-butadiene rubber. The scope of the orders includes, but is not limited to, ESB rubber in primary forms, bales, granules, crumbs, pellets, powders, plates, sheets, strip, etc. ESB rubber consists of non-pigmented rubbers and oil-extended non-pigmented rubbers, both of which contain at least one percent of organic acids from the emulsion polymerization process.

ESB rubber is produced and sold in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The scope of the investigations covers grades of ESB rubber included in the IISRP 1500 and 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as ''Clear'' or ''White Rubber.'' The 1700 grades are oil-extended and thus darker in color, and are often called ''Brown Rubber.''

Specifically excluded from the scope of these orders are products which are manufactured by blending ESB rubber with other polymers, high styrene resin master batch, carbon black master batch (*i.e.,* IISRP 1600 series and 1800 series) and latex (an intermediate product).

The products subject to these orders are currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstract Services (CAS) Registry No. 9003–55–8. This CAS number also refers to other types of styrene butadiene rubber. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written

Butadiene Rubber from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures, 82 FR 11534 (February 24, 2017) (*Mexico Preliminary Determination*); and *Emulsion Styrene-Butadiene Rubber from Poland: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 82 FR 11531 (February 24, 2017) (*Poland Preliminary Determination*).

[7] *See* section 736(a)(3) of the Act.

[8] *See Brazil Preliminary Determination; Korea Preliminary Determination; Mexico Preliminary Determination;* and *Poland Preliminary Determination.*

description of the scope of these investigations is dispositive.

[FR Doc. 2017–19287 Filed 9–11–17; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–011]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has completed its administrative review of the countervailing duty order (CVD) on crystalline silicon photovoltaic products (solar products) from the People's Republic of China (PRC) for the June 10, 2014, through December 31, 2015, period of review (POR). We have determined that the mandatory respondent Changzhou Trina Solar Energy Co., Ltd. and its cross-owned affiliates (collectively, Trina Solar) received countervailable subsidies during the POR. The final net subsidy rates are listed below in the section, ''Final Results of Administrative Review.'' We are also rescinding the review for 22 companies for which all review requests were timely withdrawn or for which we have concluded that there were no entries, exports, or sales of the subject merchandise during the POR.

DATES: Applicable September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Joseph Traw, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–6079.

Background

The Department published the *Preliminary Results* of this administrative review in the **Federal Register** on March 6, 2017.[1] We invited interested parties to comment on the *Preliminary Results.* On June 8, 2017, we received timely case briefs from the following interested parties: SolarWorld Americas, Inc. (the petitioner); the Government of China (GOC); Trina Solar; BYD (Shangluo) Industrial Co., Ltd. (BYD); and SNJ Enterprises, LLC, Dba Zamp Solar (SNJ).[2] On June 15, 2017, we received timely rebuttal comments from the petitioner, the GOC, and Trina Solar.[3]

On June 8, 2017, in accordance with section 751(a)(3)(A) of the Act, the Department extended the period for issuing the final results of this review by 60 days, to September 2, 2017. As September 2, 2017 is a Saturday and September 4, 2017 is Labor Day, the final results were extended until September 5, 2017.[4]

Scope of the Order

The merchandise covered by this order are modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this order is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum, which is hereby adopted by this notice.[5]

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by interested parties and to which we responded in the Issues and Decision Memorandum is provided in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be access directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on case briefs, rebuttal briefs, and all supporting documentation, we made changes from the *Preliminary Results.* The Department has modified its creditworthiness findings for Trina Solar. In the *Preliminary Results,* the Department found Trina Solar to be uncreditworthy during the 2012–2015 period. After reviewing Trina Solar's response to the Department's creditworthiness questionnaire,[6] the Department finds that Trina Solar was uncreditworthy from 2012 to 2013 and creditworthy during 2014 and 2015.[7]

Partial Rescission of Review

We are rescinding this administrative review for 22 companies[8] named in the *Initiation Notice.*[9] In the *Preliminary Results,* we made a preliminary determination to rescind the review of companies for which all review requests were timely withdrawn.[10] With the

[1] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Preliminary Intent To Rescind, in Part; 2014–2015,* 82 FR 12562 (March 6, 2017) (*Preliminary Results*).

[2] *See* Petitioner's Case Brief, ''Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Case Brief of SolarWorld Americas, Inc.,'' dated June 8, 2017; GOC's Case Brief, ''GOC's Case Brief: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China,'' dated June 8, 2017; Trina Solar's Case Brief, ''Crystalline Silicon Photovoltaic Products from the People's Republic of China: Case Brief,'' dated June 8, 2017; BYD's Case Brief, ''Crystalline Silicon Photovoltaic Products from the People's Republic of China: BYD's Case Brief'' dated June 8, 2017; SNJ's Case Brief, ''Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Case Brief,'' dated June 8, 2017.

[3] *See* Petitioner's Rebuttal Brief, ''Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Rebuttal Brief of SolarWorld Americas, Inc.,'' dated June 15, 2017; GOC's Rebuttal Brief, ''GOC's Rebuttal Brief Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China,'' dated June 15, 2017; Trina Solar's Rebuttal Brief, ''Crystalline Silicon Photovoltaic Products from the People's Republic of China: Rebuttal Brief,'' dated June 15, 2017.

[4] *See* Memorandum, ''Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Extension of the Deadline for Issuing the Final Results of the 2014–2015 Countervailing Duty Administrative Review,'' dated June 8, 2017.

[5] *See* Memorandum, ''Decision Memorandum for Final Results and Partial Rescission of Countervailing Duty Administrative Review: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China; 2014,'' dated concurrently with this notice (Issues and Decision Memorandum).

[6] *See* Trina Solar's Letter, ''Crystalline Silicon Photovoltaic Products from the People's Republic of China: Creditworthiness Questionnaire Response,'' dated April 20, 2017.

[7] *See* Issues and Decision Memorandum.

[8] *See* Appendix II.

[9] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 20324, 20348–20349 (April 7, 2016) (*Initiation Notice*).

[10] *See Preliminary Results* 82 FR at 12562–12563.

exception of BYD, we received no comments with regard to this preliminary determination. We are rescinding the review for these companies in accordance with 19 CFR 351.212(d)(1). With respect to BYD, the Department determined that it made no exports or sales of subject merchandise to the United States during the POR.[11]

All companies for which we are rescinding this administrative review are listed in Appendix II to this notice. For these companies, countervailing duties shall be assessed at rates equal to the rates of the cash deposits for estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR, in accordance with 19 CFR 351.212(c)(2).

Methodology

The Department conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we find that there is a subsidy, *i.e.,* a financial contribution from a government or public entity that gives rise to a benefit to the recipient, and that the subsidy is specific.[12] For a full description of the methodology underlying all of the Department's conclusions, including any determination that relied upon the use of adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(5), we calculated a countervailable subsidy rate for the mandatory respondent, Trina Solar. For the non-selected companies subject to this review,[13] we followed the Department's practice, which is to base the subsidy rates on an average of the subsidy rates calculated for those companies selected for individual review, excluding *de minimis* rates or rates based entirely on adverse facts available.[14] In this case, as there is only a single mandatory respondent, the rate for non-selected companies is the same as the rate for the mandatory respondent. We find the countervailable subsidy rates for the producers/exporters under review to be as follows:

Company	Subsidy rate (percent *ad valorem*)
Changzhou Trina Solar Energy Co., Ltd. and its Cross-Owned Affiliates[15]	13.93
Chint Solar (Zhejiang) Co., Ltd	13.93
Hefei JA Solar Technology Co., Ltd	13.93
Perlight Solar Co., Ltd	13.93
Risen Energy Co., Ltd	13.93
Shanghai JA Solar Technology Co., Ltd	13.93
Shenzhen Sungold Solar Co., Ltd	13.93
Sunny Apex Development Limited	13.93

Disclosure

We will disclose to the parties in this proceeding the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**.[16]

Assessment Rates

Consistent with 19 CFR 351.212(b)(2), we intend to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review, to liquidate shipments of subject merchandise entered, or withdrawn from warehouse, for consumption, on or after June 10, 2014, through December 31, 2015, at the *ad valorem* rates listed above.

Cash Deposit Instructions

In accordance with section 751(a)(1) of the Act, we intend to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 5, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

[11] *See* Memorandum, ''Decision Memorandum for Final Results and Partial Rescission of Countervailing Duty Administrative Review: Crystalline Silicon Photovoltaic Products from the People's Republic of China; 2014–2015,'' dated concurrently (*Solar Products Final* IDM) at Comment 3.

[12] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[13] *See* Appendix III.

[14] *See, e.g., Certain Pasta from Italy: Preliminary Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 18806, 18811 (April 13, 2010), unchanged in *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386 (June 29, 2010).

[15] *Id.* Cross-owned affiliates are: Trina Solar Limited; Trina Solar (Changzhou) Science & Technology Co., Ltd.; Yancheng Trina Solar Energy Technology Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Hubei Trina Solar Energy Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; and Changzhou Trina PV Ribbon Materials Co., Ltd.

[16] *See* 19 CFR 351.224(b).

Appendix II—List of Companies for Which We Are Rescinding This Administrative Review [17]

1. Baoding Jiasheng Photovoltaic Technology Co. Ltd.
2. Baoding Tianwei Yingli New Energy Resources Co., Ltd.
3. Beijing Tianneng Yingli New Energy Resources Co. Ltd.
4. BYD (Shangluo) Industrial Co., Ltd.
5. Canadian Solar, Inc.
6. Canadian Solar International, Ltd.
7. Canadian Solar Manufacturing (Changshu), Inc.
8. Canadian Solar Manufacturing (Luoyang), Inc.
9. Hainan Yingli New Energy Resources Co., Ltd.
10. Hengshui Yingli New Energy Resources Co., Ltd.
11. Jinko Solar Co., Ltd.
12. Jinko Solar Import and Export Co., Ltd.
13. Lixian Yingli New Energy Resources Co., Ltd.
14. Shanghai BYD Co., Ltd.
15. Shenzhen Jiawei Photovoltaic Lighting Co., Ltd.
16. Shenzhen Yingli New Energy Resources Co., Ltd.
17. Tianjin Yingli New Energy Resources Co., Ltd.
18. Wuxi Suntech Power Co., Ltd.
19. Yingli Energy (China) Co., Ltd.
20. Yingli Green Energy Holding Company Limited
21. Yingli Green Energy International Trading Company Limited
22. Zhejiang Jinko Solar Co., Ltd.

Appendix III—List of Non-Selected Companies Under Review

1. Chint Solar (Zhejiang) Co., Ltd.
2. Hefei JA Solar Technology Co., Ltd.
3. Perlight Solar Co., Ltd.
4. Risen Energy Co., Ltd.
5. Shanghai JA Solar Technology Co., Ltd.
6. Shenzhen Sungold Solar Co., Ltd.
7. Sunny Apex Development Limited

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[17] *See* Issues and Decision Memorandum at the section, ''Partial Rescission of Administrative Review.''

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–824, A–520–808]

Certain Carbon and Alloy Steel Wire Rod From the Russian Federation and the United Arab Emirates: Affirmative Preliminary Determinations of Sales at Less Than Fair Value, and Affirmative Preliminary Determination of Critical Circumstances for Imports of Certain Carbon and Alloy Steel Wire Rod From the Russian Federation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that imports of carbon and alloy steel wire rod (wire rod) from the Russian Federation (Russia) and the United Arab Emirates (the UAE) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of these investigations (POI) is January 1, 2016, through December 31, 2016. Abinsk Electric Steel Works Ltd. (Abinsk) and JSC NLMK-Ural (NLMK Ural) are the mandatory respondents in the Russia investigation. Emirates Steel Industries PJSC (Emirates Steel) is the mandatory respondent in the UAE investigation. The estimated weighted average dumping margins of sales at LTFV are shown in the ''Preliminary Determinations'' section of this notice. Interested parties are invited to comment on these preliminary determinations.

DATES: Applicable September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Kaitlin Wojnar, 202–482–3857 (Russia), or Carrie Bethea at 202–482–1491 (UAE), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of these investigations on April 26, 2017.[1] For a complete description of the events that followed the initiation of these investigations, *see* the Preliminary Decision Memorandum dated concurrently with these determinations and hereby adopted by this notice.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigations

The products covered by these investigations are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter (wire rod). Interested parties filed comments regarding the scope of the investigations. On August 7, 2017, we issued a Preliminary Scope Decision Memorandum, which addressed these comments and established a briefing schedule for scope-related issues.[3] As a result of the analysis contained therein, the scope language is unchanged from that in the *Initiation Notice*.[4] For a full description of the scope of these investigations, *see* the ''Scope of the Investigations,'' in Appendix I.

Methodology

The Department is conducting these investigations in accordance with section 731 of the Tariff Act of 1930, as amended (the Act). Pursuant to section 776(a) of the Act, the Department preliminarily relied upon facts otherwise available to assign an estimated weighted-average dumping margin to the mandatory respondents from Russia, Abinsk and NLMK Ural,

[1] *See Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, United Arab Emirates, and United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 19207 (April 26, 2017) (*Initiation Notice*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less Than Fair Value Investigation of Carbon and Alloy Steel Wire Rod from the Russian Federation and the United Arab Emirates,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[3] *See* Memorandum, ''Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations,'' August 7, 2017 (Preliminary Scope Decision Memorandum).

[4] *Id.* at 20.

and the mandatory respondent from the UAE, Emirates Steel, because these respondents did not timely respond to the Department's antidumping duty questionnaire. *See* Preliminary Decision Memorandum for a complete explanation of the methodology and analysis underlying our preliminary application of adverse facts available.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination the Department shall determine an estimated all-others rate for all exporters and producers not individually investigated, which shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. We cannot apply the methodology described in section 735(c)(5)(A) of the Act to calculate the ''all-others'' rate, as the margins in these preliminary determinations were both calculated under section 776 of the Act. In cases where no weighted-average dumping margins other than zero, *de minimis,* or those determined entirely under section 776 of the Act have been established for individually examined entities, in accordance with section 735(c)(5)(B) of the Act, the Department averages the margins calculated by the petitioners in the petition and applies the result to ''all-other'' entities not individually examined.[5]

With respect to Russia, in the Petition,[6] the petitioners calculated six margins.[7] Consistent with our practice, we assigned as the ''all-others'' rate, the simple average of the six dumping margins provided in the Petition, which is 436.76 percent.[8] With respect to the UAE, in the Petition,[9] the petitioners calculated only one margin. Therefore, we assigned as the ''all-others'' rate the only margin in the Petition, which is 84.10 percent.[10]

Affirmative Preliminary Determination of Critical Circumstances for Exporters and Producers of Wire Rod From Russia

On July 6, 2017, the petitioners filed a timely critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206, alleging that critical circumstances exist with respect to imports of wire rod from Russia.[11] The Department preliminarily determines that critical circumstances exist with respect to imports of wire rod from Russia for Abinsk, NLMK Ural, and all other exporters and producers. For a full description of the methodology and results of the Department's analysis, *see* the Preliminary Decision Memorandum.[12]

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

RUSSIA

Exporter/producer	Weighted-average margin (percent)
Abinsk Electric Steel Works Ltd	756.93
JSC NLMK-Ural	756.93
All-Others	436.80

UAE

Exporter/producer	Weighted-average margin (percent)
Emirates Steel Industries PJSC	84.10
All-Others	84.10

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of wire rod from Russia and the UAE, as described in the ''scope of the investigations'' section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. At such time, we will also instruct CBP, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), to require a cash deposit equal to the margins indicated in the chart above.[13]

In addition, section 773(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. The Department preliminarily finds that critical circumstances exist for imports of subject merchandise from Russia produced by Abinsk, NLMK Ural, and all other exporters and producers not individually examined. Therefore, in accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall also apply to unliquidated entries of merchandise from the Russian exporters/producers identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

The suspension of liquidation will remain in effect until further notice.

Verification

Because the mandatory respondents in these investigations did not provide the information requested and the Department preliminarily determines these respondents to have been uncooperative, the Department will not conduct verifications.

Public Comment

Pursuant to the schedule established in the Preliminary Scope Decision Memorandum, case briefs pertaining to the Department's preliminary scope determinations may be submitted no later than September 6, 2017.[14] Rebuttal scope briefs, limited to issues raised in the scope case briefs, may be submitted

[5] *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2 (*Sodium Nitrite from Germany Final Determination*).

[6] *See* the Petitions for the Imposition of Antidumping Duties on Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, Turkey, Ukraine, United Arab Emirates, and the United Kingdom, dated March 28, 2017 (the Petition).

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *See Certain Oil Country Tubular Goods From Thailand: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination,* 79 FR 10487 (February 25, 2014), and accompanying Preliminary Decision Memorandum, unchanged in *Certain Oil Country Tubular Goods From India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 53691 (September 10, 2014).

[11] *See* Letter to the Secretary from Petitioners re: Carbon and Alloy Steel Wire Rod from Russia, South Africa, Spain, Turkey, and the United Kingdom: Critical Circumstances Allegations, dated July 6, 2017.

[12] *See* Preliminary Decision Memorandum at 10.

[13] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[14] *See* Preliminary Scope Decision Memorandum at 4.

no later than September 13, 2017.[15] For all scope issues, parties must file separate but identical submissions on the records of all of the ongoing antidumping and countervailing duty wire rod investigations.[16]

Case briefs or other written comments pertaining to these preliminary determinations for Russia and UAE may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of these preliminary determinations.[17] Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[18] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in these proceedings are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[19] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, we are notifying the U.S. International Trade Commission (ITC) of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: September 5, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigations

The merchandise covered by these investigations are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.,* products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3011, 213.91.3015, 7213.91.3020, 7213.91.3093; 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS also may be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

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[15] *Id.*

[16] *Id.*

[17] *See* 19 CFR 351.309(c)(1)(i); *see also* 19 CFR 351.303.

[18] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

[19] *See* 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–822–806]

Carbon and Alloy Steel Wire Rod From Belarus: Preliminary Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that carbon and alloy steel wire rod (wire rod) from Belarus is being, or likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2016, through December 31, 2016.

DATES: Applicable September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Rebecca Janz or Blaine Wiltse, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2972 or (202) 482–6345, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on April 26, 2017.[1] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty

[1] *See Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, United Arab Emirates, and United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 82 FR 19207 (April 26, 2017) (*Initiation Notice*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Carbon and Alloy Steel Wire Rod from Belarus,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is steel wire rod from Belarus. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[4] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[5]

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Byelorussian Steel Works (BSW), the only mandatory respondent in this investigation and part of the Belarus-wide entity, failed to respond to sections C and D of the Department's antidumping duty questionnaire. Thus, the Department relied on the facts otherwise available on the record.[6] Additionally, because we find that the Belarus-wide entity did not act to the best of its ability to respond to the Department's request for information, we drew an adverse inference in selecting from among the facts otherwise available on the record.[7] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[8] the Department stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[9] In this preliminary determination, because no respondent qualified for a separate rate, we did not calculate producer/exporter combination rates.

Preliminary Determination

The Department preliminarily determines that the following estimated dumping margin exists:

Exporter	Estimated dumping margin (percent)
BELARUS–WIDE ENTITY[10]	280.02

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, the Department discloses to interested parties the calculations performed in connection with a preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because the Department preliminarily applied adverse facts available (AFA) to the Belarus-wide entity in this investigation in accordance with section 776 of the Act, and the applied AFA rate is based solely on information derived from the petition, there are no preliminary calculations to disclose.

Verification

Because the mandatory respondent in this investigation, BSW, did not provide information requested by the Department, and the Department preliminarily determines that BSW has been uncooperative, we will not conduct verification under section 782(i)(1) of the Act.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

[3] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[4] *See Initiation Notice,* 82 FR at 19207–08.

[5] *See* Memorandum, ''Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated August 7, 2017 (Preliminary Scope Decision Memorandum).

[6] *See* section 776(a) of the Act.

[7] *See* section 776(b) of the Act.

[8] *See Initiation Notice,* 82 FR at 19212.

[9] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[10] As detailed in the Preliminary Decision Memorandum, BSW, the sole mandatory respondent in this investigation, did not demonstrate that it was entitled to a separate rate. Accordingly, we consider this company to be part of the Belarus-wide entity.

[11] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that the Department will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, the Department will make its final determination no later than 75 days after the signature date of this preliminary determination, unless extended.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: September 5, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (*i.e.,* products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorous, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093; 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS also may be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2017–19286 Filed 9–11–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF632

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Announcement of rescheduled meeting of the South Atlantic Fishery Management Council.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the: Advisory Panel Selection Committee (Closed); Habitat Protection and Ecosystem-Based Management Committee; Southeast Data, Assessment and Review (SEDAR) Committee; Snapper Grouper Committee; Personnel Committee (Closed); Mackerel Cobia Committee; and Executive Finance Committee. There will also be meetings of the full Council. The Council will also hold two formal public comment sessions and take action as necessary.

The meeting was originally scheduled for September 11–15, 2017, but has been postponed due to the threat of Hurricane Irma.

DATES: The Council meeting has been rescheduled for September 25–29, 2017. The meeting will be held from 9 a.m. on Monday, September 25, 2017 until 1 p.m. on Friday, September 29, 2017.

ADDRESSES:

Meeting address: The meeting will be held at the Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; phone: (843) 571–1000; fax: (843) 766–9444.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.* Meeting information is available from the Council's Web site at: *http://safmc.net/meetings/council-meetings/.*

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on August 25, 2017 (82 FR 40564).

Public comment: Written comments may be directed to Gregg Waugh, Executive Director, South Atlantic Fishery Management Council (see *Council address*) or electronically via the Council's Web site at *http://safmc.net/safmc-meetings/council-meetings/.* The public comment form is open for use when the briefing book is posted to the Web site on the Friday, two weeks prior to the regularly scheduled Council meeting (8/25/17). Comments received by close of business the Monday before the rescheduled meeting (9/18/17) will be compiled, posted to the Web site as part of the meeting materials, and included in the administrative record; please use the Council's online form available from the Web site. For written comments received after the Monday before the meeting (after 9/18/17), individuals submitting a comment must use the Council's online form available from the Web site. Comments will automatically be posted to the Web site and available for Council consideration. Comments received prior to noon on Thursday, September 28, 2017 will be a part of the meeting administrative record.

The items of discussion in the individual meeting agendas are as follows:

Full Council Session, Monday, September 25, 2017, 9 a.m. Until 5 p.m.

1. The Council will hold a special session to address management measures proposed for red snapper following introductions and approval of the June 2017 Council meeting minutes. The Council will receive presentations on new red snapper data for consideration and discuss options for

possibly requesting Emergency Action by NOAA Fisheries for a 2017 red snapper season. In addition, the Council will review public hearing comments and management alternatives in Amendment 43 to the Snapper Grouper Fishery Management Plan to modify the annual catch limit (ACL) for red snapper. Public comment will be accepted on options for considering an Emergency Action request and on Amendment 43 beginning at 10:15 a.m.

2. The Council is scheduled to take final action to approve Amendment 43 for Secretarial Review. The Council may also approve a request for Emergency Action relative to red snapper.

AP Selection Committee, Tuesday, September 26, 2017, 8:00 a.m. Until 9:30 a.m. (Closed Session)

1. The Committee will review the structure of the Habitat Protection and Ecosystem-Based Management Advisory Panel and provide recommendations.

2. The Committee will review applications and provide recommendations for appointments to advisory panels.

Habitat Protection and Ecosystem-Based Management Committee, Tuesday, September 26, 2017, 9:30 a.m. Until 11:30 a.m.

1. The Committee will review, modify, and approve the Council's Essential Fish Habitat Policy Statement on Artificial Reefs and provide guidance on the draft Fishery Ecosystem Plan II Implementation Plan.

2. The Committee will receive an update on the Fishery Ecosystem Plan II Online System and a section update, an overview of the Habitat and Ecosystem Tools and Model development, discuss and provide guidance to staff.

SEDAR Committee, Tuesday, September 26, 2017, 11:30 a.m. Until 12:30 p.m.

1. The Committee will receive a report from the Scientific and Statistical Committee (SSC) on the proposed Research Track Process for conducting stock assessments and provide guidance to staff.

2. The Committee will receive an update on the status of a joint Marine Recreational Information Program (MRIP) Workshop between the South Atlantic and Gulf of Mexico Fishery Management Councils and provide guidance to staff.

3. The Committee will also discuss guidance to the SEDAR Steering Committee as appropriate and provide direction to staff.

Snapper Grouper Committee, Tuesday, September 26, 2017, 4:30 p.m. Until 6 p.m. and Wednesday, September 27, 2017, From 8 a.m. Until 4 p.m.

1. The Committee will receive updates from NOAA Fisheries on commercial catches versus quotas for species under ACLs and the status of amendments under formal Secretarial review.

2. The Committee will receive an overview of Vision Blueprint Regulatory Amendment 26 addressing recreational management actions and alternatives and Vision Blueprint Regulatory Amendment 27 addressing commercial management actions and alternatives, as identified in the 2016–20 Vision Blueprint for the Snapper Grouper Fishery. The Committee will modify the documents as necessary and provide guidance to staff.

3. The Committee will receive an update from Council staff on the Commercial Fishery Socio-economic Characterization/Portfolio analysis currently underway.

4. The Committee will review projections for red grouper, review management options and provide guidance to staff on development of an amendment to address management needs.

5. The Committee will discuss an amendment to address the Control Rule for Acceptable Biological Catch (ABC Control Rule Amendment) and possible adjustments to accountability measures for various management plans, discuss, and provide direction to staff.

6. The Committee will receive an update on the Wreckfish Individual Transferable Quota (ITQ) review, including a report from a recent meeting of shareholders, and provide guidance to staff.

7. The Committee will address Atlantic coast-wide issues, including coast-wide plans to address climate change. This includes a review of state-by-state regulations for snapper grouper species in the Greater Atlantic Region and data collection and monitoring efforts. The Committee will discuss working with the Mid-Atlantic Fishery Management Council to have them work with the states north of North Carolina to implement complementary regulations for snapper grouper species occurring in the Mid-Atlantic.

Formal Public Comment, Wednesday, September 27, 2017, 4:30 p.m.

Public comment will be accepted on items on the Council agenda. The Council Chair, based on the number of individuals wishing to comment, will determine the amount of time provided to each commenter.

Personnel Committee (Closed), Thursday, September 28, 2017, 8 a.m. Until 9 a.m.

1. The Committee will conduct the performance review for the Executive Director.

Mackerel Cobia Committee, Thursday, September 28, 2017, 9 a.m. Until 12 p.m.

1. The Committee will receive an update on commercial catches versus quotas for species managed under ACLs and an update on the status of amendments currently under Secretarial review.

2. The Committee will also receive an update on the status of a request for recalculation of the 2015 and 2016 recreational landings for Atlantic cobia, discuss and provide direction to staff.

3. The Committee will receive an update on development of the Interstate Atlantic Cobia Management Plan from the Atlantic States Marine Fisheries Commission (ASMFC) and updates from states on the 2017 Atlantic cobia season. The Committee will review public scoping comments on draft Amendment 31 to the Coastal Migratory Pelagic Fishery Management Plan (FMP) addressing complementary management of Atlantic cobia with ASMFC or removal from the FMP. The Committee will provide guidance to staff.

4. The Committee will receive an overview of Atlantic king mackerel trip limits, discuss, and provide guidance to staff.

Executive/Finance Committee, Thursday, September 28, 2017, 1:30 p.m. Until 4 p.m.

1. The Committee will receive a report from the August 2017 webinar meeting of the Executive Finance Committee and provide guidance as necessary.

2. The Committee will review the South Atlantic Regional Operations Agreement and the Council Follow-up and Priorities documents and provide guidance to staff.

3. The Committee will discuss options for an advisory panel/workgroup for the System Management Plan for the Council's managed areas and take action as necessary.

4. The Committee will discuss materials available for Council meetings and provide guidance to staff.

Council Session: Thursday, September 28, 2017, 4 p.m. Until 5 p.m. and Friday, September 29, 2017, 8:30 a.m. Until 1 p.m. (Partially Closed Session if Needed)

The Full Council will reconvene beginning on Thursday afternoon with a Call to Order, adoption of the agenda,

announcements and introductions, presentation of the Law Enforcement Officer of the Year award, and election of a new Council Chair and Vice-Chair.

The Council will receive a Legal Briefing on Litigation from NOAA General Counsel (if needed) during Closed Session. The Council will receive the Executive Director's Report, an update on the Council's Citizen Science Program, and an overview of the economic value of South Atlantic fisheries. The Council will also receive reports from NOAA Fisheries on the status of commercial and recreational catches versus ACLs for species not covered during an earlier committee meeting, status of the South Atlantic For-Hire Amendment, status of Bycatch Collection Programs, landings of dolphin fish caught with pelagic longline gear by vessel permit type, and the status of commercial electronic logbook reporting. The Council will review any Exempted Fishing Permits received by NOAA Fisheries as necessary. The Council will receive Committee reports from the Advisory Panel Selection, Habitat and Ecosystem-Based Management, SEDAR, Snapper Grouper, Mackerel Cobia, and Executive Finance Committees, review recommendations, and take action as appropriate.

The Council will receive agency and liaison reports; and discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 7, 2017.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–19321 Filed 9–11–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF548

Permanent Advisory Committee To Advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a meeting of the Permanent Advisory Committee (PAC) to advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission (WCPFC) on October 24–October 25, 2017. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting of the PAC will be held on October 24, 2017, from 8 a.m. to 4 p.m. HST (or until business is concluded) and October 25, 2017, from 8 a.m. to 4 p.m. HST (or until business is concluded).

ADDRESSES: The meeting will be held at the Outrigger Reef Waikiki Beach Resort, 2169 Kalia Road, Honolulu, Hawaii 96815—in the Diamond Head Terrace Meeting Room.

FOR FURTHER INFORMATION CONTACT: Emily Crigler, NMFS Pacific Islands Regional Office; telephone: 808–725–5036; facsimile: 808–725–5215; email: *emily.crigler@noaa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), a Permanent Advisory Committee, or PAC, has been convened to advise the U.S. Commissioners to the WCPFC, certain members of which have been appointed by the Secretary of Commerce in consultation with the U.S. Commissioners to the WCPFC. The PAC supports the work of the U.S. National Section to the WCPFC in an advisory capacity. The U.S. National Section is made up of the U.S. Commissioners and the Department of State. NMFS Pacific Islands Regional Office provides administrative and technical support to the PAC in cooperation with the Department of State. The next regular annual session of the WCPFC (WCPFC 14) is scheduled to be held December 3–December 8, 2017, in the Philippines. More information on this meeting and the WCPFC, established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, can be found on the WCPFC Web site: *http://wcpfc.int/.*

Meeting Topics

The PAC meeting topics may include the following: (1) Outcomes of the 2016 Annual Meeting and 2017 sessions of the WCPFC Scientific Committee, Northern Committee, and Technical and Compliance Committee; (2) conservation and management measures for bigeye tuna, yellowfin tuna, skipjack tuna and other species for 2017 and beyond; (3) potential U.S. proposals to WCPFC14; (4) input and advice from the PAC on issues that may arise at WCPFC14; (5) potential proposals from other WCPFC members; and (6) other issues.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Emily Crigler at (808) 725–5036 by October 6, 2017.

Authority: 16 U.S.C. 6902.

Dated: September 1, 2017.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–19242 Filed 9–11–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Advisory Board (NSGAB) Public Meeting of the National Sea Grant Advisory Board's Fall 2017 Meeting

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting of the National Sea Grant Advisory Board (NSGAB).

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the NSGAB. NSGAB members will discuss and provide advice on the National Sea

Grant College Program (NSGCP) in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the NSGCP Web site at *http://seagrant.noaa.gov/WhoWeAre/Leadership/NationalSeaGrantAdvisoryBoard/UpcomingAdvisoryBoardMeetings.aspx.*

DATES: The announced meeting is scheduled for Monday, October 16 from 8:00 a.m. to 4:45 p.m. ET and Tuesday, October 17 from 8:00 a.m. to 12:00 p.m. ET.

ADDRESSES: The meeting will be held at the Embassy Suites by Hilton, 605 West Oglethorpe Avenue, Savannah, Georgia 31401.

FOR FURTHER INFORMATION CONTACT: For any questions concerning the meeting, please contact Mary Ann Garlic, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11861, Silver Spring, Maryland, 20910, 301–734–1081,or via email at *Maryann.Garlic@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Status: The meeting will be open to public participation with a 15-minute public comment period on Tuesday, October 17, 2017 at 11:30 a.m. ET. (Check agenda using link in the Summary section to confirm time prior to attending.)

The NSGAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by Mary Ann Garlic by Friday, October 13, 2017 to provide sufficient time for NSGAB review. Written comments received after the deadline will be distributed to the NSGAB, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-serve basis.

The NSGAB, which consists of a balanced representation from academia, industry, state government, and other relevant fields, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94–461, 33 U.S.C. 1128). The NSGAB advises the Secretary of Commerce and the Director of the NSGCP with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

Special Accomodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mary Ann Garlic by Friday, October 6, 2017. See **FOR FURTHER INFORMATION CONTACT**.

Dated: *September 5, 2017.*

David Holst,

Acting Chief Financial Officer/CAO, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2017–19336 Filed 9–11–17; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF684

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Groundfish Subcommittee of the Pacific Fishery Management Council's (Pacific Council's) Scientific and Statistical Committee (SSC) will hold a meeting via webinar to review analyses informing 2019 and 2020 groundfish harvest specifications and other matters that will be considered at the November 14–20, 2017 Pacific Council meetings in Costa Mesa, California. The webinar meeting is open to the public.

DATES: The SSC Groundfish Subcommittee webinar will be held Thursday, September 28, 2017 from 8:30 a.m. to 10 a.m., and 1 p.m. to 5:30 p.m. (Pacific Daylight Time) or until business for the day has been completed.

ADDRESSES: The SSC's Groundfish Subcommittee meeting will be held by webinar. To attend the webinar, (1) join the meeting by visiting this link *http://www.gotomeeting.com/webinar;* (2) enter the webinar ID: 975–440–411, and (3) enter your name and email address (required). After logging into the webinar, please (1) dial this TOLL number: 1–631–992–3221 (not a toll-free number); (2) enter the attendee phone audio access code: 214–350–817; and (3) then enter your audio phone pin (shown after joining the webinar). **Note:** We have disabled mic/speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and System Requirements: PC-based attendees are required to use Windows® 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See the *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps*). You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at 503–820–2280, extension 411 for technical assistance. A public listening station will also be available at the Pacific Council office.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2413.

SUPPLEMENTARY INFORMATION: The purpose of the SSC Groundfish Subcommittee meeting is to review a new yelloweye rockfish rebuilding analysis, and review new data-limited estimates of overfishing limits (OFLs) for cowcod in the Monterey area, starry flounder, gopher rockfish off California, greenspotted rockfish north of 42°N. lat., blue and deacon rockfishes south of 34°27′ N. lat., blue and deacon rockfishes off Washington, and cabezon off Washington. Some of these data-limited OFLs may be reviewed and resolved by the SSC at the September 11–18, 2017 meeting in Boise, ID. If not, then the full suite of OFLs listed above will be reviewed by the SSC Groundfish Subcommittee at this September 28 webinar meeting. Additionally, the SSC Groundfish Subcommittee will review a paper addressing conditions placed on the west coast bottom trawl groundfish fishery for shortraker rockfish, silvergray rockfish, and California skate by the Marine Stewardship Council.

No management actions will be decided by the SSC's Groundfish Subcommittee. The SSC Groundfish Subcommittee members' role will be development of recommendations and reports for consideration by the SSC and Pacific Council at the November meeting in Costa Mesa, CA.

Although nonemergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of

the intent of the SSC Groundfish Subcommittee to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (503) 820–2411 at least 10 days prior to the meeting date.

Dated: September 7, 2017.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–19318 Filed 9–11–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF685

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet October 2 through October 10, 2017.

DATES: The meetings will be held Monday, October 2 through Tuesday, October 10, 2017. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the meetings.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 W. 3rd Ave., Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Council will begin its plenary session at 8 a.m. in the Aleutian Room on Wednesday, October 4, continuing through Tuesday, October 10, 2017. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. in the King Salmon/Iliamna Room on Monday, October 2 and continue through Wednesday, October 4, 2017. The Council's Advisory Panel (AP) will begin at 8 a.m. in the Dillingham/Katmai Room on Tuesday, October 3, and continue through Saturday, October 7, 2017. The IFQ Committee will meet October 2, 10 a.m. to 5 p.m. (Room to be Determined); the Enforcement Committee will meet October 3, 2017, 1 p.m. to 4 p.m. (Room TBD); the Legislative Committee will meet October 3, 2017, 1 p.m. to 4 p.m. (Room TBD); and the Halibut Charter Management Committee will meet Tuesday, October 10, noon to 4 p.m. (Room TBD).

Agenda

Monday, October 2, 2017 Through Tuesday, October 10, 2017

Council Plenary Session: The agenda for the Council's plenary session will include the following issues as well as an executive session. The Council may take appropriate action on any of the issues identified.

(1) Executive Director's Report (including a discussion of timing of allocation reviews; report on St. Paul Outreach meetings)
(2) NMFS Management Report (including Draft EM policy directive, ACLIM update, Deep Sea Corals report (T), clarification on rulemaking for recent TLAS and squid actions (T); Adak pollock report (T))
(3) NOAA GC report (including conflict of interest review)
(4) ADF&G Report (including Chinook salmon 3-river index projection)
(5) USCG Report
(6) USFWS Report
(7) Protected Species Report (including a Northern Fur Seal Synthesis)
(8) Charter Halibut Annual Permit Registration—Initial Review
(9) Mixing of Guided and Unguided Halibut—Initial Review
(10) BSAI Crab Specifications for 6 stocks—Final Specifications
(11) Groundfish Harvest Specifications—Proposed Specifications
(12) Observer tendering issue; low sampling rates—OAC report
(13) 2018 Observer Program Annual Deployment Plan—Review; OAC and EMWG Reports
(14) GOA Rockfish Program Review—Review
(15) Salmon FMP Amendment—Expanded discussion paper
(16) Halibut Abundance-based PSC Limits—Discussion paper
(17) Halibut Decksorting EFP and Halibut Genetics Sampling EFP—Review
(18) IFQ Committee Report including data review of small unfished quota and quota migration
(19) Halibut Retention in Sablefish Pots—Discussion paper
(20) Staff Tasking

The Advisory Panel will address most of the same agenda issues as the Council except items 1–7.

The SSC agenda will include the following issues:

(1) BSAI Crab Specifications for 6 stocks—Final Specifications
(2) Groundfish Harvest Specifications—Proposed Specifications
(3) 2018 Observer Program Annual Deployment Plan—Review
(4) GOA Rockfish Program Review—Review
(5) Halibut Abundance-based PSC Limits—Discussion paper
(6) Halibut Decksorting EFP and Halibut Genetics Sampling EFP—Review

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/*.

Although other non-emergency issues not on the agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: September 7, 2017.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–19319 Filed 9–11–17; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Community Bank Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Community Bank Advisory Council (CBAC or Council) of the Consumer Financial Protection Bureau (Bureau or CFPB). The notice also describes the functions of the Council.

DATES: The meeting date is Thursday, September 28, 2017, 3:30 p.m. to 5:15 p.m. eastern daylight time.

ADDRESSES: The meeting location is the Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Crystal Dully, Outreach and Engagement Associate, 202–435–9588, *CFPB_CABandCouncilsEvents@cfpb.gov,* Consumer Advisory Board and Councils Office, External Affairs, 1275 First Street NE., Washington, DC 20002.

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CBAC Charter provides: Pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Community Bank Advisory Council under agency authority.

Section 3 of the CBAC Charter states: ''The purpose of the Advisory Council is to advise the Bureau in the exercise of its functions under the federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less.''

II. Agenda

The Community Bank Advisory Council will discuss Know Before You Owe: Overdraft and financial empowerment initiatives.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. CFPB will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CBAC members for consideration. Individuals who wish to attend the Community Bank Advisory Council meeting must RSVP to *cfpb_cabandcouncilsevents@cfpb.gov* by noon, Wednesday, September 27, 2017. Members of the public must RSVP by the due date and must include ''CBAC'' in the subject line of the RSVP.

III. Availability

The Council's agenda will be made available to the public on Wednesday September 13, 2017, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and transcript of this meeting will be available after the meeting on the CFPB's Web site *consumerfinance.gov.*

Dated: September 7, 2017.

Leandra English,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2017–19324 Filed 9–11–17; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the Establishment and Modification of Oregon Military Training Airspace

AGENCY: Air National Guard Bureau, Department of the Air Force.

ACTION: Notice of Availability (NOA) of a Record of Decision (ROD).

SUMMARY: On August 29, 2017, the United States Air Force signed the ROD for the Establishment and Modification of Oregon Military Training Airspace. The ROD states the Air Force decision to modify existing airspace and establish new airspace to support the Oregon Air National Guard's F–15 training operations and to implement practicable mitigations.

The decision was based on matters discussed in the Final Environmental Impact Statement (FEIS) for the Proposed Establishment and Modification of Oregon Military Training Airspace; contributions from the public, tribes, and regulatory agencies; and other relevant factors. The FEIS was made available to the public on May 19, 2017 through a NOA in the **Federal Register** (82 FR 22997) with a 30-day wait period that ended on June 19, 2017.

Authority: This NOA is published pursuant to the regulations (40 CFR part 1506.6) implementing the provisions of the NEPA of 1969 (42 U.S.C. 4321, *et seq*) and the Air Force's Environmental Impact Analysis Process (32 CFR parts 989.21(b) and 989.24(b)(7)).

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Marek, NGB/A4, 3500 Fetchett Ave, JB Andrews, MD, 20762, ph: 240–612–8855.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2017–19312 Filed 9–11–17; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0101]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) Main Study Base Year (MS1), Operational Field Test First Follow-Up (OFT2), and Tracking and Recruitment for Main Study First Follow-Up (MS2)

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 12, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2017–ICCD–0101. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be

addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 216–34, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) Main Study Base Year (MS1), Operational Field Test First Follow-up (OFT2), and Tracking and Recruitment for Main Study First Follow-up (MS2).

OMB Control Number: 1850–0911.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 119,799.

Total Estimated Number of Annual Burden Hours: 61,253.

Abstract: The Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) is the first study conducted by the National Center for Education Statistics (NCES) to follow a nationally representative sample of students as they enter and move through the middle grades (grades 6–8). The data collected through repeated measures of key constructs will provide a rich descriptive picture of the academic experiences and development of students during these critical years and will allow researchers to examine associations between contextual factors and student outcomes. The study will focus on student achievement in mathematics and literacy along with measures of student socioemotional wellbeing and other outcomes. The study will also include a special sample of students with different types of disabilities that will provide descriptive information on their outcomes, educational experiences, and special education services. Main Study Base Year (MS1) data for the MGLS:2017 will be collected from a nationally-representative sample of sixth-grade students beginning in January 2018, with annual follow-ups beginning in January 2019 and in January 2020 when most of the students in the sample will be in grades 7 and 8, respectively. In preparation for the Main Study (MS), the data collection instruments and procedures were field tested. An Item Validation Field Test (IVFT) was conducted in the winter/spring of 2016 to determine the psychometric properties of assessment and survey items and the predictive potential of items so that valid, reliable, and useful assessment and survey instruments could be composed for the Main Study. The MGLS:2017 Operational Field Test (OFT) Base Year (OFT1) data collection was conducted in the winter/spring of 2017. Tracking of students and associated recruitment of schools for the OFT First Follow-up (OFT2) data collection is scheduled to begin in August 2017. The primary purpose of the OFT is to: (a) Obtain information on recruiting, particularly for students in three focal IDEA-defined disability groups: Specific learning disability, autism, and emotional disturbance; (b) obtain a tracking sample that can be used to study mobility patterns in subsequent years; and (c) test protocols, items, and administrative procedures. The MS1 district and school recruitment began in February 2017. The MS1 and OFT2 data collections will begin in January 2018. The Main Study First Follow-up (MS2) tracking and recruitment will begin in September 2018. OMB approved the MGLS:2017 OFT1 data collection, MS1 recruitment, and OFT2 tracking materials and procedures in December 2016 with the latest change request approved in June 2017 (OMB #1850–0911 v.11–15). This request is to conduct: (1) The MS1 data collection; (2) the OFT2 recruitment and data collection; and (3) the tracking of Main Study sample students and associated recruitment of schools in preparation for the MS2 data collection. Due to overlap in timing, the approved MS1 recruitment and OFT2 tracking activities are being carried over in this submission. Therefore, this submission presents the procedures, materials, and associated respondent burden for all activities related to MS1 and OFT2, as well as those related to MS2 tracking and recruitment.

Dated: September 6, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–19229 Filed 9–11–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0062]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of the ESSA Title I, Part C, Migrant Education Programs (Study Instruments)

AGENCY: Office of Planning, Evaluation and Policy Development (OPEPD), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before October 12, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2017–ICCD–0062. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education,

400 Maryland Avenue SW., LBJ, Room 216–34, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Joanne Bogart, 202–205–7855.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of the ESSA Title I, Part C, Migrant Education Programs (Study Instruments).

OMB Control Number: 1875–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 450.

Total Estimated Number of Annual Burden Hours: 236.

Abstract: The purpose of this study is to examine how state agencies, school districts, local operating agencies, and schools implement education and transition programs for children and youth who are migratory students under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA), Title I, Part C.

Dated: September 7, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–19325 Filed 9–11–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Revision of a Currently Approved Information Collection for the Energy Efficiency and Conservation Block Grant Financing Programs

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; public comment request.

SUMMARY: The Department of Energy (DOE) invites public comment on a revision of a currently approved collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The information collection requests a revision and three-year extension of its Energy Efficiency and Conservation Block Grant Program, OMB Control Number 1910–5150.

The proposed action will continue the collection of information on the status of financing program activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously. No changes to the collection instrument are being proposed.

DATES: Comments regarding this revision to an approved information collection must be received on or before November 13, 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 Sallie Glaize, EE–5W, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, Email: *Sallie.Glaize@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: James Carlisle, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, Phone: (202) 287–1724, Fax: (412) 386–5835, Email: *Gregory.Davoren@ee.doe.gov.*

Additional information and reporting guidance concerning the Energy Efficiency and Conservation Block Grant Program (EECBG) is available for review at the following Web site: *https://energy.gov/eere/wipo/articles/energy-efficiency-and-conservation-block-grant-financing-programs-after-grant.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–5150; (2) Information Collection Request Title: Energy Efficiency and Conservation Block Grant Program Financing Programs; (3) Type of Review: Revision of a Currently Approved Information Collection; (4) Purpose: To collect information on the status of Financing Program activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously; (5) Annual Estimated Number of Respondents: 108; (6) Annual Estimated Number of Total Responses: 175; (7) Annual Estimated Number of Burden Hours: 525; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $21,000. Respondents, total responses, burden hours and the annual cost burden have all been significantly reduced because of the retirement of grants, fewer programs and a lessened burden on reporting and recordkeeping costs.

Comments are invited on: (a) Whether the revision of the currently approved 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 pertaining to the approved collection of information, including the validity of the methodology and assumptions used; (c) ways to further enhance the quality, utility, and clarity of the information being collected; and (d) ways to further minimize the burden regarding the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Statutory Authority: Title V, Subtitle E of the Energy Independence and Security Act (EISA), Pub. L. 110–140 as amended (42 U.S.C. 17151 *et seq.*).

Issued in Washington, DC, June 1, 2017.

James Carlisle,

Supervisory Policy Advisor, Weatherization and Intergovernmental Program, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2017–19281 Filed 9–11–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–2427–000]

Hudson Energy Services, 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 Hudson Energy Services, 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 September 26, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 6, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–19246 Filed 9–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2126–003.
Applicants: Idaho Power Company.
Description: Notice of Non-Material Change in Status of Idaho Power Company.
Filed Date: 9/6/17.
Accession Number: 20170906–5029.
Comments Due: 5 p.m. ET 9/27/17.

Docket Numbers: ER16–262–001.
Applicants: Uniper Global Commodities North America LLC.
Description: Notice of Change In Status of Uniper Global Commodities North America LLC.
Filed Date: 9/6/17.
Accession Number: 20170906–5040.
Comments Due: 5 p.m. ET 9/27/17.

Docket Numbers: ER16–1456–010.
Applicants: Talen Energy Marketing, LLC.
Description: Compliance filing: Amended Compliance Filing Cancelling Reactive Tariff to be effective 12/1/2016.
Filed Date: 9/5/17.
Accession Number: 20170905–5131.
Comments Due: 5 p.m. ET 9/26/17.

Docket Numbers: ER16–2091–001.
Applicants: Idaho Power Company.
Description: Compliance filing: 2016 MBR Updated Market Power Analysis Compliance Filing ER16–2091 and EL16–114 to be effective N/A.
Filed Date: 9/6/17.
Accession Number: 20170906–5080.
Comments Due: 5 p.m. ET 9/27/17.

Docket Numbers: ER17–2146–001.
Applicants: NorthWestern Corporation.
Description: Tariff Amendment: Amendment of Pending Tariff Filing—NITSA with Project Spokane, LLC to be effective 7/27/2017.
Filed Date: 9/5/17.
Accession Number: 20170905–5094.
Comments Due: 5 p.m. ET 9/26/17.

Docket Numbers: ER17–2440–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Service Agreement No. 4775, Queue No. AB1–125 & Cancellation of SA No. 4617 to be effective 8/7/2017.
Filed Date: 9/6/17.
Accession Number: 20170906–5087.
Comments Due: 5 p.m. ET 9/27/17.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF16–259–001; EL16–43–000.
Applicants: Bright Light Capital, LLC.
Description: Refund Report of Bright Light Capital, LLC.
Filed Date: 9/6/17.
Accession Number: 20170906–5091.
Comments Due: 5 p.m. ET 9/27/17.

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: September 6, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–19245 Filed 9–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the

communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP15–558–000	8–21–2017	New Jersey Utility Association.
2. CP16–10–000	8–22–2017	Felice Scher.
3. CP15–554–000	8–22–2017	Victor J. Marshall.
4. CP16–10–000, CP15–554–000	8–22–2017	Private Citizen.
5. CP16–10–000	8–22–2017	Peter B. Howell.
6. CP16–10–000	8–22–2017	Private Citizen.
7. CP15–558–000	8–23–2017	Utility and Transportation Contractors Association of New Jersey.
8. CP15–554–000	8–24–2017	Helen Reiter.
9. CP15–554–000	8–25–2017	W.S. Alexander.
10. CP15–554–000, CP15–554–001, CP15–555–000	8–28–2017	Kathy Labriola.
11. CP15–558–000	8–28–2017	New Jersey State Chamber of Commerce.
12. CP15–558–000	8–28–2017	Greater Atlantic City Chamber.
13. CP16–10–000	8–30–2017	Private Citizen.
14. CP15–558–000	8–30–2017	International Union of Operating Engineers.
15. CP15–93–000	8–30–2017	Interstate Natural Gas Association of America.
16. CP15–558–000	8–30–2017	Chemistry Council of New Jersey.
17. CP15–558–000	8–31–2017	Carbon Chamber and Economic Development Corp.
Exempt:		
1. CP14–96–000	8–24–2017	U.S. House Representative James R. Langevin.
2. CP17–101–000	8–28–2017	U.S. House Representative Frank Pallone, Jr.

Dated: September 6, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–19249 Filed 9–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC17–271–000]

Black Marlin Pipeline Company; Notice of Request for Waiver

Take notice that on September 1, 2017, Black Marlin Pipeline Company filed a request for waiver of requirements to file FERC Form No. 2–A and 3–Q, as required by 18 CFR 260.2 and 18 CFR 260.300.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on September 22, 2017.

Dated: September 6, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–19244 Filed 9–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–2428–000]

Just Energy Pennsylvania Corp.; 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 Just Energy Pennsylvania Corp.'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 September 26, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 6, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–19247 Filed 9–11–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–2429–000]

Just Energy Texas I Corp.; 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 Just Energy Texas I Corp.'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 September 26, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 6, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–19248 Filed 9–11–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9967–43–Region 2]

Notice of Reopening of Public Comment Period on the Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency.

ACTION: Reopening of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is reopening the public comment period on the ''Clean Water Act Section 303(d): Availability of List Decisions.'' In response to stakeholder requests, EPA is reopening the comment period October 12, 2017.

DATES: The comment period for the notice that was published on August 9, 2017 (82 FR 37214) is reopened. Comments must be submitted to EPA until October 12, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. FRL–9965–72–Region 2, to Aimee Boucher, U.S. Environmental Protection Agency Region 2, 290 Broadway, New York, NY 10007, email *boucher.aimee@epa.gov,* telephone (212)–637–3837. Oral comments will not be considered. Copies of EPA's letter and support document regarding New York's list can be obtained by calling or emailing Ms. Boucher at the address above. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Boucher to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Aimee Boucher at (212) 637–3837 or at *boucher.aimee@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 9, 2017, EPA published in the **Federal Register** (82 FR 37214) a notice and request for comment on EPA's proposed decision to add 71 waterbody/pollutant combinations to New York's 2016 303(d) list. EPA will consider public comment before transmitting its final listing decision to the State. The proposed decision, as initially published in the **Federal Register**, provided for written comments to be submitted to EPA on or before September 8, 2017 (a 30-day public comment period). Since publication, EPA has received a request for additional time to submit comments. EPA is reopening the public comment period until October 12, 2017.

Dated: August 25, 2017.

Catherine McCabe,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 2.

[FR Doc. 2017–19350 Filed 9–11–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0783]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 13, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0783.

Title: Section 90.176, Coordination Notification Requirements on Frequencies Below 512 MHz, at 769–775/799–805 MHz, or at 1427–1432 MHz.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 13 respondents; 3,380 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection (IC) is contained in sections 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,690 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

Section 90.176 requires each Private Land Mobile frequency coordinator to provide, within one business day, a listing of their frequency recommendations to all other frequency coordinators in their respective pool, and if requested, an engineering analysis.

Any method can be used to ensure this compliance with the ''one business day requirement'' and must provide, at a minimum, the name of the applicant; frequency or frequencies recommended; antenna locations and heights; and effective radiated power; the type(s) of emissions; the description of the service area; and the date and time of the recommendation. If a conflict in recommendations arises, the effected coordinators are jointly responsible for taking action to resolve the conflict, up to and including notifying the Commission that an application may have to be returned.

This requirement seeks to avoid situations where harmful interference is created because two or more coordinators recommend the same frequency in the same area at approximately the same time to different applicants.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–19221 Filed 9–11–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1080]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before October 12, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1080.

Title: Improving Public Safety Communications in the 800 MHz Band.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions, and State, Local or Tribal governments.

Number of Respondents and Responses: 428 respondents; 2,143 responses.

Estimated Time per Response: 0.5 hours–10 hours (4.5 hours average).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 160, 251–254, 303, and 332.

Total Annual Burden: 7,411 hours.

Total Annual Cost: $7,200.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission will work with respondents to ensure that their concerns regarding the confidentiality of any proprietary or public safety-sensitive information are resolved in a manner consistent with the Commission's rules. See 47 CFR 0.459.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The information sought will assist 800 MHz licensees in preventing or resolving interference and enable the Commission to implement its rebanding program. Under that program, certain licensees are being relocated to new frequencies in the 800 MHz band, with all rebanding costs paid by Sprint Nextel Corporation (Sprint). The Commission's overarching objective in this proceeding is to eliminate interference to public safety communications. The Commission's orders provided for the 800 MHz licensees in non-border areas to complete rebanding by June 26, 2008. This completion date was not met and the Commission orders also provide for rebanding to be completed in the areas along the U.S. borders with Canada and Mexico.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–19223 Filed 9–11–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1168]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public

and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 13, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1168.

Title: Application for Mobility Fund Phase I Support, FCC Form 680.

Form Number: FCC Form 680.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents and Responses: 10 respondents and 10 responses.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection 47 U.S.C. 154, 254 and 303(r).

Total Annual Burden: 15 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The information collected will be made available for public inspection. Respondents seeking to have the information collected withheld from public inspection may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR Section 0.459.

Needs and Uses: The Commission will use the information collected in FCC Form 680 to determine whether a winning bidder is qualified to receive Mobility Fund Phase I and Tribal Mobility Fund Phase I support. On November 18, 2011, the Commission released an order comprehensively reforming and modernizing the universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation. *Connect America Fund et al.,* Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*). In adopting the *USF/ICC Transformation Order,* the Commission created the Connect America Mobility Fund to ensure the availability of mobile broadband networks in areas where a private-sector business case is lacking. Phase I of the Mobility Fund provided one-time universal service support for the deployment of networks for mobile voice and broadband, and a separate, complementary Tribal Mobility Fund Phase I provided one-time universal service support to accelerate the availability of mobile voice and broadband service in Tribal areas.

To implement these reforms and conduct competitive bidding for Mobility Fund Phase I support and Tribal Mobility Fund Phase I support, the Commission adopted rules in sections 1.21004(a), 54.1004, 54.1005, 54.1006, 54.1007, and 54.1008 containing information collection requirements that would be used to determine whether a winning bidder of Mobility Fund Phase I support and Tribal Mobility Fund Phase I support is qualified to receive such support. Section 1.21004(a) requires all winning bidders of universal service support to apply for the support by the applicable deadline. Sections 54.1005(b) and 54.1006 require a winning bidder to submit, using FCC Form 680, ownership information, proof of its status as an Eligible Telecommunications Carrier, a description of its spectrum access, a detailed project description, any guarantee of performance that the Commission may require, and various certifications. Sections 54.1004(d)(3) and 54.1008(d) require a winning bidder to certify in its application that it has substantively engaged appropriate Tribal officials. In addition, sections 54.1007(a) and (b) require a winning bidder to obtain an irrevocable standby letter of credit, which the winning bidder must maintain until at least 120 days after the winning bidder receives its final distribution of support.

The Commission needs the information collection requirements to ensure that a winning bidder for universal support submits an application for support, which, in turn, will allow the Commission to determine whether the applicant is qualified to receive such support. The Commission also needs to use the information collected to protect the integrity of the universal service programs by requiring a winning bidder to maintain a letter of credit that will secure a return of universal service funds from a winning bidder that has defaulted on its obligations. Without such information, the Commission could not determine whether to provide the universal service support to the winning bidder or protect the government's interest in the funds it disburses in Mobility Fund Phase I and Tribal Mobility Fund Phase I.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–19222 Filed 9–11–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0819]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the

information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before November 13, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0819.

Title: Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund.

Form Numbers: FCC Form 555, FCC Form 481, FCC Form 497, FCC Form 5629, FCC Form 5630, FCC Form 5631.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households and business or other for-profit.

Number of Respondents and Responses: 20,094,358 respondents; 23,954,123 responses.

Estimated Time per Response: .0167 hours–250 hours.

Frequency of Response: Annual, biennial, monthly, daily and on occasion reporting requirements and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302.

Total Annual Burden: 11,028,571 hours.

Total Annual Cost: $937,500.

Privacy Act Impact Assessment: Yes.

The Commission completed a Privacy Impact Assessment (PIA) for some of the information collection requirements contained in this collection. The PIA was published in the **Federal Register** at 78 FR 73535 on December 6, 2013. The PIA may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.*

Nature and Extent of Confidentiality: Some of the requirements contained in this information collection affect individuals or households, and thus, there are impacts under the Privacy Act. The FCC's system of records notice (SORN) associated with this collection is FCC/WCB–1, ''Lifeline Program.''

The Commission will use the information contained in FCC/WCB–1 to cover the personally identifiable information (PII) that is required as part of the Lifeline Program (''Lifeline''). As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Commission published FCC/WCB–1 ''Lifeline Program'' in the **Federal Register** on December 6, 2013 (78 FR 73535).

Also, respondents may request materials or information submitted to the Commission or to the Universal Service Administrative Company (USAC or Administrator) be withheld from public inspection under 47 CFR 0.459 of the FCC's rules. We note that USAC must preserve the confidentiality of all data obtained from respondents; must not use the data except for purposes of administering the universal service programs; and must not disclose data in company-specific form unless directed to do so by the Commission.

Needs and Uses: The Commission will submit this information collection after this comment period to obtain approval from the Office of Management and Budget (OMB) of revisions to this information collection.

On April 27, 2016, the Commission released an order reforming its low-income universal service support mechanisms. Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund, WC Docket Nos. 11–42, 09–197, 10–90, Third Further Notice of Proposed Rulemaking, Order on Reconsideration, and Further Report and Order, (*Lifeline Third Reform Order*). This revision implements the new forms for the Lifeline program for consumer enrollment and certification, recertification, and one-per household verification. These forms are intended for use as standard forms for all consumers and ETCs participating in the Lifeline program. This revision also implements the transition to payment of the Lifeline reimbursement to ETCs based on data from USAC's NLAD database. In the Lifeline Third Reform Order, the Commission directed USAC to propose improved methods of providing payment to Lifeline providers that will reduce costs and burdens to the Fund and to Lifeline providers. In addition, the Commission seeks to update the number of respondents for certain requirements contained in this information collection, thus increasing the total burden hours for some requirements and decreasing the total burden hours for other requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–19220 Filed 9–11–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0132]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 13, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control No.: 3060–0132.

Title: Supplemental Information—72–76 MHz Operational Fixed Stations, FCC Form 1068A.

Form No.: FCC Form 1068A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or household; state, local or tribal government; business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 300 respondents and 300 responses.

Estimated Time per Response: 30 minutes.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 CFR 90.257 of the Commission's rules and the Communications Act of 1934, as amended.

Total Annual Burden: 150 hours.

Total Annual Cost: No costs.

Privacy Act Impact Assessment: Yes. The FCC has a System of Records Notice (SORN), FCC/WTB–1, ''Wireless Services Licensing Records'', to cover the personally identifiable information affected by these information collection requirements. At this time, the Commission (FCC) is not required to complete a Privacy Impact Assessment.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Needs and Uses: FCC rules require that the applicant agrees to eliminate any harmful Interference caused by the operation to TV reception on either channel 4 or 5 that might develop. This form is required by the Communications Act of 1934, as amended; International Treaties and FCC Rules 47 CFR 90.257. FCC staff will use the data to determine if the information submitted will meet the FCC Rule requirements for the assignment of frequencies in the 72–76 MHz band.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–19219 Filed 9–11–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012491.

Title: TraPac—SSA Cooper Terminal Discussion Agreement.

Parties: SSA Cooper, LLC and TraPac Inc.

Filing Party: Paul M. Heylman; Saul Ewing LLP; 1919 Pennsylvania Avenue NW., Suite 550; Washington, DC 20006.

Synopsis: The Agreement authorizes TraPac and SSA Cooper to engage in discussions about the possible formation of a new entity or possible cooperation within existing company structures at the Port of Jacksonville, Florida.

Agreement No.: 012067–020.

Title: U.S. Supplemental Agreement to HLC Agreement.

Parties: BBC Chartering Carriers GmbH & Co. KG and BBC Chartering & Logistic GmbH & Co. KG, as a single member; Hanssy Shipping Pte. Ltd.; Industrial Maritime Carriers, L.L.C.; and Rickmers-Linie GmbH & Cie. KG.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W.; New York, NY 10024.

Synopsis: The amendment deletes Chipolbrok (Chinese-Polish Joint Stock Shipping Company) and J. Poulson Shipping A/S as parties to the U.S. Supplemental Agreement and/or the HLC Agreement and clarifies procedures relating to admission of parties.

By Order of the Federal Maritime Commission.

Dated: September 6, 2017.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2017–19334 Filed 9–11–17; 8:45 am]

BILLING CODE 6731–AA–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, Recordkeeping, and Disclosure Requirements Associated with the Guidance on Response Programs for Unauthorized Access to Customer Information (FR 4100; OMB No. 7100–0309).

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

DATES: Comments must be submitted on or before November 13, 2017.

ADDRESSES: You may submit comments, identified by FR 4100, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposal 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, Recordkeeping, and Disclosure Requirements Associated with the Guidance on Response Programs for Unauthorized Access to Customer Information.

Agency form number: FR 4100.

OMB control number: 7100–0309.

Frequency: On occasion.

Respondents: State member banks, bank holding companies, affiliates and certain non-bank subsidiaries of bank holding companies, uninsured state agencies and branches of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations.

Estimated number of respondents: Develop response program: 1; Incident notification: 412.

Estimated average hours per response: Develop response program: 24; Incident notification: 36.

Estimated annual burden hours: Develop response program: 24; Incident notification: 14,832.

General description of report: The ID-Theft Guidance is the information collection associated with the *Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice* (security guidelines), which was published in the **Federal Register** in March 2005.[1] Trends in customer information theft and the accompanying misuse of that information led to the issuance of these security guidelines applicable to financial institutions. The security guidelines are designed to facilitate timely and relevant notification to affected customers and the appropriate regulatory authority of the financial institutions. The security guidelines provide specific direction regarding the development of response programs and customer notifications.

Legal authorization and confidentiality: The Board has determined that the reporting, recordkeeping, and disclosure requirements associated with the FR 4100 are authorized by the Gramm-Leach-Bliley Act and are mandatory (15 U.S.C. 6801(b)). Since the FR 4100 provides that a financial institution regulated by the Board should notify its designated Reserve Bank upon becoming aware of an incident of

[1] *See* 70 FR 15736.

unauthorized access to sensitive customer information, issues of confidentiality may arise if the Board were to obtain a copy of a customer notice during the course of an examination, a copy of a SAR, or other sensitive customer information. In such cases, the information would likely be exempt from disclosure to the public under the Freedom of Information Act (5 U.S.C. 552(b)(3), (4), (6), and (8)). Also, a federal employee is prohibited by law from disclosing a SAR or the existence of a SAR (31 U.S.C. 5318(g)).

Board of Governors of the Federal Reserve System, September 6, 2017.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–19217 Filed 9–11–17; 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 October 5, 2017.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Central Bancshares, Inc.* to acquire, through its newly formed subsidiaries, CBI Midco, Inc. and CBI Merger Sub, Inc., all of Cambridge, Nebraska, up to 100 percent of the voting shares of Republic Corporation, and thereby indirectly acquire United Republic Bank, both of Omaha, Nebraska.

In connection with this application CBI Midco, Inc. and CBI Merger Sub, Inc., have applied to become bank holding companies.

B. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Pacific Premier Bancorp, Inc.;* to acquire 100 percent of Plaza Bancorp, and thereby indirectly acquire Plaza Bank, all of Irvine, California.

Board of Governors of the Federal Reserve System, September 6, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–19211 Filed 9–11–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–4765]

Center for Devices and Radiological Health Premarket Approval Application Critical to Quality Pilot Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or Agency or we) Center for Devices and Radiological Health (CDRH or Center), Office of Compliance (OC) and Office of In Vitro Diagnostics and Radiological Health (OIR) is announcing its Premarket Approval Application Critical to Quality (PMA CtQ) pilot program. Participation in the PMA CtQ pilot program is voluntary and the program aims to evaluate device design and manufacturing process quality information early on to assist FDA in its review of the PMA manufacturing section and post-approval inspections. This voluntary pilot program is part of the FDA's ongoing Case for Quality effort to apply innovative strategies that promote medical device quality and is a joint effort between the FDA's CDRH and Office of Regulatory Affairs (ORA). The pilot program is intended to provide qualifying PMA applicants with the option to engage FDA on development of CtQ controls for their device and forego the standard PMA preapproval inspection. FDA would in turn, focus on the PMA applicant's implementation of the CtQ controls during a postmarket inspection.

DATES: FDA is seeking participation in the voluntary PMA CtQ pilot program starting from September 29, 2017. See the ''Participation'' section for instructions on how to submit a request to participate. This pilot program will run from September 29, 2017, to December 31, 2018. The voluntary PMA CtQ pilot program will accept the first nine participants with submissions that meet the acceptance criteria.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–

2017–N–4765 for ''Center for Devices and Radiological Health Premarket Approval Application Critical to Quality Pilot Program.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Bleta Vuniqi, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3463, Silver Spring, MD 20993, 301–796–5497, *Bleta.Vuniqi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

CDRH believes that proactive engagement with PMA applicants and a focused inspectional approach will promote quality in device design and manufacturing. CDRH plans to initiate the voluntary PMA CtQ pilot program focusing on activities critical to product and process quality starting September 29, 2017. The Center intends to work collaboratively with PMA applicants identified to participate in the PMA CtQ pilot program to define characteristics of the PMA device that are critical to product quality and how these characteristics are controlled in design and manufacturing prior to the postmarket inspection. PMA applicants can expect discussions during the inspection to relate to those factors most likely to impact device quality by working with FDA, before PMA approval, on defining activities critical to product and process quality. Improvements in overall device quality may reduce device failures and recalls, and translate into more efficient utilization of resources for CDRH, ORA, and the device industry. Previously, CDRH's OC completed the implantable devices containing batteries Critical to Quality Inspection pilot which established a collaborative framework for determining specific operations, design considerations, and controls that most impact the quality and safety of these devices (Ref. 1). Post-inspection feedback from ORA and CDRH's OC indicated that FDA can improve its approach for medical device inspections by focusing on areas critical to quality of the device, which in turn will change the compliance focus to influence better device quality. In addition, feedback received from industry participants indicated that many of the risks for devices reside in product and process design and post-production activities.

Whether firms are appropriate candidates for participation in this voluntary PMA CtQ pilot program is determined based on the factors listed in Section A. Participation Criteria. Upon applicant's pre-PMA q-submission meeting request, FDA will identify appropriate candidates to participate in this voluntary pilot program. Due to resource constraints, we intend to limit this voluntary pilot program to a maximum of nine participants. FDA intends to work with each participating applicant to identify characteristics of its device and its manufacture that are critical to its quality, which may include specific device features or quality control practices. The identified CtQ characteristics and controls will help focus FDA's post-approval inspectional approach.

The aim of the voluntary PMA CtQ pilot program is to have the applicant discuss device design and manufacturing process quality information with FDA early on to assist FDA in its review of the PMA manufacturing section and post-approval inspections. The goal of this voluntary pilot program is to streamline the premarket approval process while assuring that a firm's quality system includes rigorous controls for features and characteristics considered critical to the safety and effectiveness of the device. FDA believes that focusing on these activities may also lead to fewer device failures, a decrease in device recalls, and improved device innovation and efficiencies. For participants in the voluntary PMA CtQ pilot program, FDA intends to forego conducting a preapproval inspection, which it would usually conduct, and instead conduct a more focused post-approval inspection. That post-approval inspection would focus on the design, manufacturing, and quality assurance practices identified by the applicant in its PMA. In addition, this voluntary pilot program is part of the FDA's ongoing Case for Quality effort to apply innovative strategies that promote medical device quality instead of focusing only on compliance with the Quality System regulation (Ref. 2). This voluntary PMA CtQ pilot program does not represent a new requirement; instead, it is an opportunity to promote quality in device manufacturing, timely review of the PMA manufacturing section and more effective use of inspectional resources, and an enhanced opportunity to engage with firms regarding device quality prior to marketing of the device. This voluntary PMA CtQ pilot program augments the FDA's traditional Quality System Inspection Technique (QSIT) inspectional approach, and does not replace it (Ref. 3).

Combination products, products regulated by the Center for Biologics Evaluation and Research, and companion diagnostic In Vitro Diagnostic devices that require coordination with the Center for Drug Evaluation and Research are not within the scope of this voluntary PMA CtQ pilot program.

A. Participation Criteria

Firms that are appropriate to participate in this voluntary PMA CtQ pilot program are those firms submitting an original PMA who follow the procedures set out in Section B and who also:

1. Submit a request for a pre-PMA q-submission meeting, and

a. Provide the recommended information identified in the guidance document, ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' dated February 18, 2014 (Ref. 4), along with a statement of interest for participation in this voluntary PMA CtQ pilot program in the applicant's cover letter.

b. Provide a list of PMA-related facilities responsible for the manufacture, processing, packing, or installation with the applicant's pre-PMA q-submission submission package.

c. If available, submit a draft list of critical characteristics for the device which is the subject of the PMA application.

2. As part of the PMA application, include the proposed list of critical characteristics as well as their associated controls for the device which is the subject of the PMA. The list should include characteristics where failure in meeting the characteristic would have a reasonable likelihood or a remote likelihood of causing a death or serious injury.

3. Have their PMA application accepted and filed for review by FDA (Ref. 5).

4. Have not had Quality System deficiencies identified in FDA's review of the manufacturing section of the applicant's PMA (Ref. 6).

5. Have had an FDA inspection of the PMA-related facilities conducted at least once within the last 5 years.

6. An FDA inspection of the PMA-related facilities has not been classified as Official Action Indicated or been subject to a judicial action (*e.g.,* seizure or injunction, including consent decrees) within the last 5 years (Ref. 7).

B. Procedures

Postmarket inspections under this proposed voluntary PMA CtQ pilot program will be conducted in accordance with FDA's general establishment inspection authority in section 704(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374(a)). FDA intends for the investigator to follow the current medical device inspection model as outlined in the 2017 FDA Investigations Operations Manual (IOM) Chapter 5 and FDA Compliance Program 7383.001 ''Medical Device Premarket Approval and Postmarket Inspections'' dated March 5, 2012, with the following exceptions: (1) The inspection is conducted in the postmarket setting and (2) the postmarket inspection includes an evaluation of critical control measures for the production of the device are implemented (Ref. 8–10). Section 5.1.2 of the IOM provides the inspection may be directed for ''obtaining specific information on new technologies, good commercial practices, or data for establishing food standards or other regulations.''

Additionally, FDA intends on soliciting feedback from ORA, industry participants, and CDRH's OC/OIR staff during the voluntary PMA CtQ pilot program. Feedback from participants will be gathered through meetings and questions proposed in Appendices A and B (Ref. 11).

The following captures FDA's expected process for the voluntary PMA CtQ pilot program:

1. A firm submits a pre-PMA q-submission meeting request at least 75–90 days in advance of submission of the PMA application following the recommendations outlined in the guidance document ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' (Ref. 4) dated February 18, 2014. Additional expectations, include:

a. Providing a statement in the pre-PMA q-submission to support being considered for participation in the voluntary PMA CtQ pilot program.

b. Providing a list of PMA-related facilities responsible for the manufacture, processing, packing, or installation for the device which is the subject of the PMA as part of the applicant's pre-PMA q-submission package.

c. If available, submitting a draft list of critical characteristics for the device which is the subject of the PMA application.

2. During the pre-PMA q-submission meeting, FDA clearly communicates the voluntary PMA CtQ pilot program expectations and discusses and provides the applicant's proposed draft list of critical characteristics for the PMA device and provide feedback.

3. Once a firm has expressed interest in participating in the voluntary PMA CtQ pilot program, CDRH determines whether:

a. all PMA-related facilities have been inspected within the last 5 years, and

b. all of the inspections of the PMA-related facilities have not been classified as Official Action Indicated and have not been subject to a judicial action (*e.g.,* a seizure or injunction action, including a consent decree) within the last 5 years.

4. The PMA application:

a. Is accepted and filed for review by FDA.

b. Includes as part of the manufacturing section the proposed list of device critical characteristics as well as their associated controls, which may include certain design, manufacturing, or quality assurance practices. The list of critical characteristics identified in 4(b) is based on risk to the patient or user, including whether failure in meeting the characteristic can have a reasonable likelihood or a remote likelihood of causing a death or serious injury.

c. Is accompanied by a streamlined process validation report to CDRH OC or OIR no later than day 45 within the PMA application process.

5. CDRH OC/OIR completes the following during review of the PMA application:

a. Checks the CtQ information for clarity, completeness, and relevance to the Quality System regulation within days 1–45, with the goal to have the list of device critical characteristics as well as their associated controls finalized by day 60 of the 180-day clock.

b. Reviews the manufacturing section of the PMA application within the first 30 days of the 180-day clock. If Quality System deficiencies are identified during this review, then the PMA application would no longer be appropriate for inclusion in this voluntary PMA CtQ pilot program. The reviewer would follow the current established procedures and place the PMA application on ''hold'' pending correction of the deficiencies.

c. Reviews the validation report identified in section B.4(c) within 30 calendar days of receipt. Any concerns raised by the validation report review may result in the issuance of a deficiency letter that will place the PMA on ''hold'' pending Good Manufacturing Practices corrections.

d. Provides an inspectional assignment to the investigator and makes necessary technical expertise available to the ORA. The critical characteristics and controls will help guide the investigator and appropriately focus their activities during the postmarket inspection. In addition, CDRH intends to include CtQ and control information in an inspectional assignment and contact the investigator(s) to discuss critical control measures and expectations prior to the inspection.

6. Following an approval decision, FDA conducts the postmarket inspection in accordance with the 2017 FDA IOM, Compliance Program 7382.845, and Compliance Program 7383.001 (Ref. 8–10) utilizing elements

of QSIT, and informed by the PMA CtQ information developed jointly by FDA and the PMA applicant.

7. Following completion of the inspection, participating FDA Offices and applicants provide the information/data needed to assess the voluntary PMA CtQ pilot program's impact on resource utilization and quality focus, utilizing the evaluation forms provided in Appendices A and B (Ref. 11).

During this voluntary PMA CtQ pilot program, CDRH staff intends to be available to answer questions or concerns that may arise. The voluntary PMA CtQ pilot program participants will be asked to comment on and discuss their experiences with the PMA CtQ pilot submission process. Comments and discussions may assist FDA in determining whether the goals of this voluntary PMA CtQ pilot program goal are clearly communicated and attainable.

II. Duration of the Premarket Approval Application Critical to Quality Pilot Program

FDA intends to accept requests for participation in the voluntary PMA CtQ pilot program from September 29, 2017, to December 31, 2018, or until such time as when a total of nine PMAs have been enrolled.

III. Paperwork Reduction Act of 1995

This notice refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 814, subparts A through E have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the collections of information in ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' have been approved under OMB control number 0910–0756.

IV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *https://www.regulations.gov.* (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Implantable Devices that Contain Batteries Critical to Quality Inspection Pilot. Available at *https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/MedicalDeviceQualityandCompliance/UCM469128.pdf.*
2. FDA's Case for Quality, available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/MedicalDeviceQualityandCompliance/ucm378185.htm.*
3. FDA's Guide to Inspections of Quality Systems, Quality System Inspection Technique, available at *http://www.fda.gov/ICECI/Inspections/InspectionGuides/ucm074883.htm.*
4. FDA Guidance for Industry and FDA Staff ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' dated February 18, 2014. Available at *https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-meddev-gen/documents/document/ucm311176.pdf.*
5. FDA's Guidance for Industry and FDA Staff: Acceptance and Filing Reviews for Premarket Approval Applications (PMAs) at *https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-meddev-gen/documents/document/ucm313368.pdf.*
6. FDA's Guidance for Industry and FDA Staff: Quality System Information for Certain Premarket Application Reviews, available at *http://www.fda.gov/medicaldevices/deviceregulationandguidance/guidancedocuments/ucm070897.htm.*
7. FDA's Official Action Indicated, available at *http://www.fda.gov/downloads/AboutFDA/Transparency/PublicDisclosure/GlossaryofAcronymsandAbbreviations/UCM212061.pdf.*
8. 2017 FDA Investigations Operations Manual (IOM) Chapter 5 at *https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-afda-ice/documents/document/ucm123522.pdf.*
9. FDA Compliance Program 7383.001 at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/MedicalDeviceQualityandCompliance/UCM295570.pdf.*
10. FDA Compliance Program 7382.845 at *https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM244277.pdf.*
11. Appendices A and B.

Dated: September 5, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–19258 Filed 9–11–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–4515]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; Ocfentanil, Carfentanil, Pregabalin, Tramadol, Cannabidiol, Ketamine, and Eleven Other Substances; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the notice that appeared in the **Federal Register** of August 14, 2017. In the notice, FDA requested comments concerning abuse potential, actual abuse, medical usefulness, trafficking, and impact of scheduling changes on availability for medical use of 17 drug substances. The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the notice published August 14, 2017 (82 FR 37866). Submit either electronic or written comments by September 20, 2017.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 20, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of September 20, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a

third party may not wish to be 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–4515 for ''International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; Ocfentanil, Carfentanil, Pregabalin, Tramadol, Cannabidiol, Ketamine, and Eleven Other Substances; Extension of Comment Period.'' 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 Office 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: James R. Hunter, Center for Drug Evaluation and Research, Controlled Substance Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5150, Silver Spring, MD 20993–0002, 301–796–3156, email: *james.hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 14, 2017, FDA published a notice with a 30-day comment period to request comments on abuse potential, actual abuse, medical usefulness, trafficking, and impact of scheduling changes on availability for medical use of 17 drug substances.

The Agency has received requests for an extension of the comment period for the notice. Each request conveyed concern that the current 30-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the notice.

FDA has considered the requests and is extending the comment period for the notice until September 20, 2017. The Agency believes this extension allows adequate time for interested persons to submit comments.

Dated: September 7, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–19261 Filed 9–11–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–0734]

Evaluation and Reporting of Age, Race, and Ethnicity Data in Medical Device Clinical Studies; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled ''Evaluation and Reporting of Age, Race, and Ethnicity Data in Medical Device Clinical Studies.'' The purpose of this document is to outline FDA's recommendations and expectations for the evaluation and reporting of age, race, and ethnicity data in medical device clinical studies. The primary intent of these recommendations is to improve the quality, consistency, and transparency of data regarding the performance of medical devices within specific age, race, and ethnic groups.

DATES: The announcement of the guidance is published in the **Federal Register** on September 12, 2017.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time 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–2016–D–0734 for ''Evaluation and Reporting of Age, Race, and Ethnicity Data in Medical Device Clinical Studies; Guidance for Industry and Food and Drug Administration Staff; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Evaluation and Reporting of Age, Race, and Ethnicity Data in Medical Device Clinical Studies'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Katheryn O'Callaghan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5418, Silver Spring, MD 20993–0002, 301–796–6349; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

Section 907 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) (FDASIA) directed the Agency to publish and provide to Congress a report describing the extent to which clinical trial participation and safety and effectiveness data by demographic subgroups, including sex, age, race, and ethnicity, is included in applications submitted to FDA (Ref. 1). Section 907 also directed FDA to publish and provide to Congress an action plan outlining recommendations to improve the completeness and quality of analyses of data on demographic subgroups in summaries of product safety and effectiveness data and in labeling; on the inclusion of such data, or the lack of availability of such data, in labeling, and to improve the public availability of such data to patients health care providers and researchers, and to indicate the applicability of these recommendations to the types of medical products addressed in section 907. In the Action Plan, FDA committed to developing this guidance as part of the strategy to fulfill FDASIA requirements (Ref. 2).

This guidance outlines FDA's recommendations and expectations for patient enrollment, data analysis, and reporting of age, race, and ethnicity data in medical device clinical studies. Specific objectives of this guidance are to (1) encourage the collection and consideration of age, race, ethnicity, and associated covariates (*e.g.,* body size, biomarkers, bone density) during the study design stage; (2) outline recommended analyses of study subgroup data with a framework for considering demographic data when interpreting overall study outcomes; and (3) specify FDA's recommendations for reporting age, race, and ethnicity-specific information in summaries and labeling for approved or cleared medical devices. FDA believes these recommendations will help improve the quality, consistency, and transparency of data regarding the performance of medical devices within specific age, race, and ethnic groups as well as encourage appropriate enrollment of diverse populations including relevant age, race, and ethnic groups. Proper evaluation and reporting of these data can benefit patients, clinicians, researchers, regulators, and other stakeholders.

FDA considered comments received on the draft guidance that appeared in the **Federal Register** of June 20, 2016 (81 FR 39927). FDA revised the guidance as appropriate in response to the comments. This document extends the policy established in FDA's guidance entitled ''Evaluation of Sex-Specific Data in Medical Device Clinical Studies'' to additional demographic subgroups of age, race, and ethnicity (Ref. 3).

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Evaluation and Reporting of Age, Race, and Ethnicity data in Medical Device Clinical

Studies.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm* or *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Evaluation and Reporting of Age, Race, and Ethnicity Data in Medical Device Clinical Studies'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500626 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). These collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subparts A through E, have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 814, subpart H, have been approved under OMB control number 0910–0332; the collections of information in 21 CFR part 822 have been approved under OMB control number 0910–0449; and the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485.

V. References

The following references are on display in the Dockets Management Staff office (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. *FDA Report:* Collection, Analysis, and Availability of Demographic Subgroup Data for FDA-Approved Medical Products, issued August 2013, required under FDASIA section 907, available at *http://www.fda.gov/downloads/RegulatoryInformation/Legislation/SignificantAmendmentstotheFDCAct/FDASIA/UCM365544.pdf.*
2. FDA's Action Plan to Enhance the Collection and Availability of Demographic Subgroup Data (August, 2014), available at *https://www.fda.gov/downloads/RegulatoryInformation/Legislation/SignificantAmendmentstotheFDCAct/FDASIA/UCM410474.pdf.*
3. FDA's guidance entitled ''Evaluation of Sex-Specific Data in Medical Device Clinical Studies'' (August 22, 2014), available at *https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM283707.pdf.*

Dated: September 7, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–19259 Filed 9–11–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners—45 CFR Part 60 Regulations and Forms, OMB No. 0915–0126—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR must be received no later than November 13, 2017.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail to the HRSA Information Collection Clearance Officer, 14N39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference, in compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995.

Information Collection Request Title: National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners—45 CFR part 60 Regulations and Forms, OMB No. 0915–0126—Revision.

Abstract: This is a request for a revision of OMB approval of the information collection contained in regulations found at 45 CFR part 60 governing the National Practitioner Data Bank (NPDB) and the forms to be used in registering with, reporting information to, and requesting information from the NPDB. Administrative forms are also included to aid in monitoring compliance with Federal reporting and querying requirements. Responsibility for NPDB implementation and operation resides in HRSA's Bureau of Health Workforce.

The intent of the NPDB is to improve the quality of health care by encouraging hospitals, State licensing boards, professional societies, and other entities providing health care services to identify and discipline those who engage in unprofessional behavior, and to restrict the ability of incompetent health care practitioners, providers, or suppliers to move from State to State without disclosure of previous damaging or incompetent performance. It also serves as a fraud and abuse clearinghouse for the reporting and disclosing of certain final adverse actions (excluding settlements in which no findings of liability have been made) taken against health care practitioners, providers, or suppliers by health plans, Federal agencies, and State agencies.

The reporting forms, request for information forms (query forms), and administrative forms (used to monitor compliance) are accessed, completed, and submitted to the NPDB

electronically through the NPDB Web site at *https://www.npdb.hrsa.gov/.* All reporting and querying is performed through the secure portal of this Web site. This revision proposes changes to eliminate redundant and unnecessary forms, improve user error recovery, and improve overall data integrity. There is no change to the average burden per response. The total estimated number of respondents has increased from 5 million in 2015 to over 6 million in 2017, primarily attributable to increases in use of the ''One-Time Query for an Individual'' and ''Continuous Query'' forms. The increase in total respondents has resulted in an estimated increase of approximately 47,000 total burden hours.

Need and Proposed Use of the Information: The NPDB acts primarily as a flagging system; its principal purpose is to facilitate comprehensive review of practitioners' professional credentials and background. Information is collected from, and disseminated to, eligible entities (entities that are entitled to query and/or report to the NPDB as authorized in Title 45 CFR part 60 of the Code of Federal Regulations) on the following: (1) Medical malpractice payments, (2) licensure actions taken by Boards of Medical Examiners, (3) State licensure and certification actions, (4) Federal licensure and certification actions, (5) negative actions or findings taken by peer review organizations or private accreditation entities, (6) adverse actions taken against clinical privileges, (7) Federal or State criminal convictions related to the delivery of a health care item or service, (8) civil judgments related to the delivery of a health care item or service, (9) exclusions from participation in Federal or State health care programs, and (10) other adjudicated actions or decisions. It is intended that NPDB information should be considered with other relevant information in evaluating credentials of health care practitioners, providers, and suppliers.

Likely Respondents: Eligible entities or individuals that are entitled to query and/or report to the NPDB as authorized in regulations found at 45 CFR part 60.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours (rounded up)
Accreditation	10	1	10	.75	8
Civil Judgment	10	1	10	.75	8
Criminal Conviction (Guilty Plea or Trial) (manual)	1,140	1	1,140	.75	855
Criminal Conviction (Guilty Plea or Trial) (automated)	688	1	688	.0003	1
DEA/Federal Licensure	698	1	698	.75	524
Deferred Conviction or Pre-Trial Diversion	54	1	54	.75	41
Exclusion/Debarment (manual)	1,624	1	1,624	.75	1,218
Exclusion/Debarment (automated)	3,180	1	3,180	.0003	1
Government Administrative	2,062	1	2,062	.75	1,547
Health Plan Action	335	1	335	.75	252
Injunction	10	1	10	.75	8
Medical Malpractice Payment (manual)	11,993	1	11,993	.75	8,995
Medical Malpractice Payment (automated)	242	1	242	.0003	1
Nolo Contendere (No Contest) Plea	85	1	85	.75	64
Peer Review Organization	10	1	10	.75	8
Professional Society	49	1	49	.75	37
State Licensure (manual)	19,160	1	19,160	.75	14,370
State Licensure (automated)	25,980	1	25,980	.0003	8
Title IV Clinical Privileges Actions	698	1	698	.75	524
Correction, Revision to Action, Correction of Revision to Action, Void, Notice of Appeal (manual)	11,114	1	11,114	.25	2,779
Correction, Revision to Action, Correction of Revision to Action, Void, Notice of Appeal (automated)	17,966	1	17,966	.0003	6
One-Time Query for an Individual (manual)	2,054,381	1	2,054,381	.08	164,351
One-Time Query for an Individual (automated)	2,813,341	1	2,813,341	.0003	844
One-Time Query for an Organization (manual)	39,695	1	39,695	.08	3,176
One-Time Query for an Organization (automated)	10,201	1	10,201	.0003	4
Continuous Query (manual)	643,860	1	643,860	.08	51,509
Continuous Query (automated)	226,838	1	226,838	.0003	69
Self-Query on an Individual	131,481	1	131,481	.42	55,223
Self-Query on an Organization	1,545	1	1,545	.42	649
Entity Registration (Initial)	1,073	1	1,073	1	1,073
Entity Registration (Renewal & Update)	14,060	1	14,060	.25	3,515
Agent Registration (Initial)	85	1	85	1	85
Agent Registration (Renewal & Update)	278	1	278	.08	23
Entity Profile	9,000	1	9,000	.25	2,250
Licensing Board Attestation	301	1	301	1	301
Licensing Board Data Request	146	1	146	10.5	1,533
Reconciling Missing Actions	7,981	1	7,981	0.8	6,385
Corrective Action Plan	10	1	10	.08	1

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours (rounded up)
Missing Report Form	29	1	29	.08	3
Subject Statement and Dispute	3,547	1	3,547	.75	2,661
Request for Dispute Resolution	99	1	99	8	792
Electronic Transfer of Funds (EFT) Authorization	654	1	654	.08	53
Authorized Agent Designation	213	1	213	.25	54
Account Discrepancy	10	1	10	.25	3
New Administrator Request	3,016	1	3,016	.08	242
Query Credit Purchase	789	1	789	.08	64
Educational Request	10	1	10	.08	1
Account Balance Transfer	10	1	10	.08	1
Total	6,059,761	.....	6,059,761	.....	326,120

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Amy McNulty,

Acting Director, Division of the Executive Secretariat.

[FR Doc. 2017–19252 Filed 9–11–17; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Developmental Biology Subcommittee.

Date: October 2, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda Downtown, 7335 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710 B Rockledge Drive, Bethesda, Maryland 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 6, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–19232 Filed 9–11–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: Government owned intellectual property covering imaging agents with improved renal clearance available for licensing and commercialization.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the patent applications listed below may be obtained by emailing the indicated licensing contact at the National Heart, Lung, and Blood, Office of Technology Transfer and Development Office of Technology Transfer, 31 Center Drive, Room 4A29, MSC2479, Bethesda, MD 20892–2479; telephone: 301–402–5579. A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing. A description of the technology available for licensing follows.

Evans Blue Dye Derivatives for Serum Albumin Labeling

Description of Technology: The invention is an imaging agent and method of its use for imaging blood pools and the lymphatic system. The imaging agent binds with high affinity to serum albumin, the most abundant serum protein, and can be tagged with several isotopes making it suitable for magnetic resonance imaging or positron emission tomographic imaging. To date, only very few blood-pool tracers have been introduced for positron emission tomography. The existing ones have short half-lives (20.4 min for ^{11}C and 2.05 min for ^{15}O) and thus can only be used in centers with an in-house cyclotron. Compared with these radiometals, ^{18}F has the advantages of being a pure position emitter with ideal half-life. It is the dominant radioisotope used for PET imaging for both clinical applications and preclinical investigations. Evans blue dye has been an important tool in many physiological and clinical investigations because of its

high affinity for plasma albumin and has been used for a long time in clinical practice for determination of patient plasma volume. The current imaging agent is a truncated form of EB [NEB]) and has the ability to bind albumin with high affinity. The agent is also conjugated to NOTA to enable in vivo labeling with ^{18}F labeling by the formation of ^{18}F-aluminum fluoride complex. The NOTA also facilitates radiometal labeling of NEB with either ^{68}Ga or ^{64}Cu. The resulting imaging agent does not affect the in vivo behavior of serum albumin such as circulation, extra-vascularization, and turn-over; thus the imaging results will reflect the distribution and metabolism of serum albumin accurately.

Potential Commercial Applications:

- Blood pool imaging.
- Lymphatic system imaging.

Development Stage:

- In vivo data available.

Inventors: Xiaoyuan Chen, Lixin Lang, Gang Niu (all of NIBIB).

Intellectual Property: HHS Reference No. E–099–2015/0–US–01 and/0–US–02.

- U.S. Patent Applications 14/675,364 filed March 31, 2015 and 15/587,948 filed May 5, 2017.

Licensing Contact: Michael Shmilovich, Esq, CLP; 301–435–5019; *shmilovm@nih.gov.*

Collaborative Research Opportunity: The National Institute of Environmental Health Sciences seeks statements of capability or interest from parties interested in collaborative research to further develop and evaluate, please contact Cecilia Pazman, Office of Technology Transfer, National Heart, Lung and Blood Institute, *pazmance@nhlbi.nih.gov,* 301–594–4273.

Dated: September 7, 2017.

Michael Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.

[FR Doc. 2017–19313 Filed 9–11–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation Grants for Flow Cytometers.

Date: September 26, 2017.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared and High-End Mass Spectrometers.

Date: September 28–29, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sudha Veeraraghavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1504, *sudha.veeraraghavan@nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Nursing and Related Clinical Sciences Study Section.

Date: October 2–3, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Rafael Semansky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2040M, Bethesda, MD 20892, 301–496–5749, *semanskyrm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Clinical Studies in Kidney Diseases (PAR–15–161).

Date: October 2, 2017.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 6, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–19230 Filed 9–11–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Resource Centers for Minority Aging Research (RCMAR) ZAG1 ZIJ–9 J1.

Date: October 31–November 1, 2017.

Time: 5:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Carmen Moten, Ph.D., MPH, Scientific Review Officer, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703, *cmoten@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Resource Centers for Minority Aging Research (RCMAR) ZAG1 ZIJ–9 J3.

Date: October 31–November 1, 2017.

Time: 5:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Carmen Moten, Ph.D., MPH, Scientific Review Officer, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703, *cmoten@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Resource Centers for Minority Aging Research (RCMAR) ZAG1 ZIJ–9 J2.

Date: October 31–November 1, 2017.

Time: 5:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Carmen Moten, Ph.D., MPH, Scientific Review Officer, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703, *cmoten@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 6, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–19231 Filed 9–11–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Products to Prevent (Lethal) Drug-induced Respiratory Depression (8942).

Date: September 26, 2017.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 827–5702, *lf33c.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS).

Dated: September 6, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–19233 Filed 9–11–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Biannual Infrastructure Development Measures for State Adolescent and Transitional Aged Youth Treatment Enhancement and Dissemination Implementation (SYT–I) and Adolescent and Transitional Aged Youth Treatment Implementation (YT–I) Programs—(OMB No. 0930–0344)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment has developed a set of infrastructure development measures in which recipients of cooperative agreements will report on various benchmarks on a semi-annual basis. The infrastructure development measures are designed to collect information at the state-level and site-level.

The projects were previously named State Adolescent Treatment Enhancement and Dissemination (SAT–ED) and State Youth Treatment Enhancement and Dissemination (SYT–ED) Programs and are now called State Adolescent And Transitional Aged Youth Treatment Enhancement and Dissemination Implementation (SYT–I) and Adolescent and Transitional Aged Youth Treatment Implementation (YT–I) Programs.

No changes have been made to the Biannual Infrastructure Development Measures Report. The only revision to the biannual progress report is due to the decrease in the number of respondents. The infrastructure development measures are based on the programmatic requirements conveyed in TI–15–004, Cooperative Agreements for SYT–I and TI–17–002, Cooperative Agreements for YT–I.

The purpose of this program is to provide funding to States/Territories/Tribes to improve treatment for adolescents and transitional age youth through the development of a learning laboratory with collaborating local community-based treatment provider sites. Through the shared experience between the State/Territory/Tribe and the local community-based treatment provider sites, an evidence-based practice (EBP) will be implemented, youth and families will be provided services, and a feedback loop will be developed to enable the State/Territory/Tribe and the sites to identify barriers and test solutions through a services component operating in real time. The expected outcomes of these cooperative agreements will include needed changes to State/Territorial/Tribal policies and procedures; development of financing structures that work in the current environment; and a blueprint for States/Territories/Tribes and providers that can be used throughout the State/Territory/Tribe to widen the use of effective substance use treatment EBPs. Additionally, adolescents (ages 12 to 18), transitional age youth (ages 18 to 24), and their families/primary caregivers who are provided services through grant funds will inform the process to improve systems issues.

Estimates for response burden were calculated based on the methodology (survey data collection) being used and are based on previous experience collecting similar data and results of the pilot study. For emailed biannual surveys, burden estimates of 12.0 hours were used for Project Directors and/or Program Managers and burden estimates of 7.2 hours were used for other project staff members. It is estimated that 11 Project Directors and/or Program Managers and 22 other staff members from Cohort 1 will respond to the emailed survey biannually (*i.e.,* twice each year) for 3 years at an estimated total burden of 1,742.4 hours for Cohort 1. It is estimated that 2 Project Directors and/or Program Managers and 4 other staff members from Cohort 2 will respond to the emailed survey biannually (*i.e.,* twice each year) for 3 years at an estimated total burden of 316.8 hours for Cohort 2. It is estimated that 11 Project Directors and/or Program Managers and 22 other staff members from Cohort 3 will respond to the emailed survey biannually (*i.e.,* twice each year) for 3 years at an estimated total burden of 1,742.4 hours for Cohort 3. The burden hours of Cohort 1 (1,742.4

hours), Cohort 2 (316.8 hours) and Cohort 3 (1,742.4 hours) combined comes to a total estimated burden for the emailed biannual survey of 3,801.6 hours.

TABLE 1—DATA COLLECTION BURDEN FOR BIANNUAL INFRASTRUCTURE DEVELOPMENT MEASURE FOR COHORTS 1, 2, AND 3

Cohort	Respondent type	Number of respondents	Responses per respondent	Total responses	Hours per response	Total annual hour burden
1	Project Director[a]	11	2	22	12.0	264
2	Project Director[a]	2	2	4	12.0	28
3	Project Director[a]	11	2	22	12.0	264
Total		24		48		556

[a] Total PD/PM and total other staff member cost are calculated as hourly wage × time spent on progress report × number of participants.

TABLE 2—ANNUALIZED BURDEN FOR BIANNUAL INFRASTRUCTURE DEVELOPMENT

Respondent type	Number of respondents	Responses per respondent	Total responses	Hours per response	Total annual hour burden
Project Director	11	2	22	12.0	264

Written comments and recommendations concerning the proposed information collection should be sent by October 12, 2017 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2017–19251 Filed 9–11–17; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Intertek USA, Inc., Baytown, TX, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Intertek USA, Inc., Baytown, TX, as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., Baytown, TX, has been approved to gauge petroleum and petroleum products for customs purposes for the next three years as of September 29, 2014.

DATES: As of September 29, 2014, Intertek USA, Inc., Baytown, TX, was reapproved as a Customs-approved commercial gauger. The next triennial inspection date will be scheduled for September 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc., 2612 West Main St., Baytown, TX 77520, has been approved to gauge and accredited to test petroleum and petroleum products in accordance with the provisions of 19 CFR 151.13. Intertek USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3	Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculation of Petroleum Quantities.
17	Marine Measurements.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: August 31, 2017.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2017–19264 Filed 9–11–17; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., Savannah, GA, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., Savannah, GA, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., Savannah, GA, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes for the next three years as of September 22, 2016.

DATES: As of September 22, 2016, Intertek USA, Inc., Savannah, GA, was reapproved as a Customs-approved commercial gauger and reaccredited as a Customs-accredited laboratory. The next triennial inspection date will be scheduled for September 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 312 Carolan St., Savannah, GA 31415, has been approved to gauge and accredited to test petroleum and petroleum products in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3	Gauging.
7	Temperature Determination.
8	Sampling.
11	Density Determination.
12	Calculation of Petroleum Quantities.
17	Marine Measurements.

Intertek USA, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	Method	Title
27–03	ASTM D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	ASTM D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–06	ASTM D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	ASTM D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	ASTM D4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–57	D7039	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–58	D5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: September 5, 2017.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2017–19265 Filed 9–11–17; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation of Intertek USA, Inc., Yabucoa, PR, as a Commercial Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of Intertek USA, Inc., Yabucoa, PR, as a commercial laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., Yabucoa, PR, has been accredited to test petroleum and petroleum products for customs purposes for the next three years as of July 7, 2016.

DATES: As of July 7, 2016, Intertek USA, Inc., Yabucoa, PR, was reaccredited as a Customs-accredited laboratory. The next triennial inspection date will be scheduled for July 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12, that Intertek USA, Inc., Road #901, Km. 2.7, Bo. Camino Nuevo, Yabucoa, PR 00767–0186, has been accredited to test petroleum and petroleum products in accordance with the provisions of 19 CFR 151.12. Intertek USA, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	Method	Title
27–01	ASTM D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	ASTM D1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–08	ASTM D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.

CBPL No.	Method	Title
27–11	ASTM D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	ASTM D4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–48	ASTM D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.

Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: August 31, 2017.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2017–19267 Filed 9–11–17; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3382–EM; Docket ID FEMA–2017–0001]

Louisiana; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Louisiana (FEMA–3382–EM), dated August 28, 2017, and related determinations.

DATES: The declaration was issued August 28, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 28, 2017, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Louisiana resulting from Tropical Storm Harvey beginning on August 27, 2017, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Louisiana.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, William J. Doran III, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Louisiana have been designated as adversely affected by this declared emergency:

Beauregard, Calcasieu, Cameron, Jefferson Davis, and Vermillion Parishes for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–19262 Filed 9–11–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4333–DR; Docket ID FEMA–2017–0001]

Idaho; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Idaho (FEMA–4333–DR), dated August 27, 2017, and related determinations.

DATES: The declaration was issued August 27, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 27, 2017, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Idaho resulting from flooding, landslides, and mudslides during the period of May 6 to June 16, 2017, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare

that such a major disaster exists in the State of Idaho.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Timothy B. Manner, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Idaho have been designated as adversely affected by this major disaster:

Blaine, Camas, Custer, Elmore, and Gooding Counties for Public Assistance.

All areas within the State of Idaho are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–19263 Filed 9–11–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4325–DR; Docket ID FEMA–2017–0001]

Nebraska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–4325–DR), dated August 1, 2017, and related determinations.

DATES: This amendment was issued August 21, 2017.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 1, 2017.

Platte County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2017–19266 Filed 9–11–17; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border of the United States near the city of Calexico in the state of California.

DATES: This determination takes effect on September 12, 2017.

SUPPLEMENTARY INFORMATION: The principal mission requirements of the Department of Homeland Security (''DHS'') include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation's national security. Recognizing the critical importance of border security, Congress has ordered DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109–367, 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined ''operational control'' as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. Secure Fence Act of 2006, Public Law 109–367, 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Consistent with that mandate from Congress, the President's Executive Order on Border Security and Immigration Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, § 1. To achieve this end, the President directed, among other things, that I take immediate steps to prevent all unlawful entries into the United States, to include the immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, § 4(a).

Congress has provided the Secretary of Homeland Security with a number of authorities necessary to carry out DHS's border security mission. One of these authorities is found at section 102 of the

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''). Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Title V, § 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress has called for the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

Determination and Waiver

Section 1

The United States Border Patrol's El Centro Sector is an area of high illegal entry. In fiscal year 2016 alone, the United States Border Patrol (''Border Patrol'') apprehended over 19,000 illegal aliens and seized approximately 2,900 pounds of marijuana and approximately 126 pounds of cocaine. Since the creation of DHS, and through the construction of border infrastructure and other operational improvements, the Border Patrol has been able to make significant gains in border security within the El Centro Sector; however, more work needs to be done. The El Centro Sector remains an area of high illegal entry for which there is an immediate need to construct border barriers and roads.

To begin to meet the need for enhanced border infrastructure in the El Centro Sector, DHS will take immediate action to replace existing primary fencing. Fence replacement in the El Centro Sector is among DHS's highest priority border security requirements. The fence replacement will take place along an approximately three mile segment of the border that starts at the Calexico West Land Port of Entry and extends westward. This approximately three mile segment of the border is referred to herein as the ''Project Area'' and is more specifically described in Section 2 below.

The replacement of primary fencing within the Project Area will further Border Patrol's ability to deter and prevent illegal crossings. The existing primary fencing was installed in the 1990s, using a design that is no longer optimal for Border Patrol operations. The existing fourteen foot, landing mat-style fencing will be replaced with an eighteen to twenty-five foot barrier that employs a more operationally effective design that is intended to meet Border Patrol's operational requirements. In addition, DHS will, where necessary, make improvements to an existing patrol road within the Project Area to ensure that it meets Border Patrol's operational standards. Replacing the existing primary fence with a new, more operationally effective design and improving the existing patrol road will improve Border Patrol's operational efficiency and, in turn, further deter and prevent illegal crossings.

Section 2

I determine that the following area in the vicinity of the United States border, located in the State of California within the United States Border Patrol's El Centro Sector is an area of high illegal entry (the ''Project Area''): Starting at the Calexico West Land Port of Entry and extending approximately three miles westward.

There is presently a need to construct physical barriers and roads in the vicinity of the border of the United States to deter illegal crossings in the Project Area. In order to ensure the expeditious construction of the barriers and roads in the Project Area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of the IIRIRA as amended.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the Project Area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, and safety features) in the Project Area, the following statutes, including all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)), the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)), the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 *et seq.*)), the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Public Law 113–287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 *et seq.,* now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 *et seq.*)), the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*), the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Archeological Resources Protection Act (Pub. L. 96–95 (16 U.S.C. 470aa *et seq.*)), the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*), the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 *et seq.*), the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), the Noise Control Act (42 U.S.C. 4901 *et seq.*), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*), the Archaeological and Historic Preservation Act (Pub. L. 86–523, as amended, repealed, or replaced by Public Law 113–287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 *et seq.,* now codified at 54 U.S.C. 312502 *et seq.*)), the Antiquities Act (formerly codified at 16 U.S.C. 431 *et seq.,* now codified 54 U.S.C. 320301 *et seq.*), the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 *et seq.,* now codified at 54 U.S.C. 3201–320303 & 320101–320106), the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*), the Federal Land Policy and Management Act (Pub. L. 94–579 (43 U.S.C. 1701 *et seq.*)), section 10 of the Reclamation Project Act of 1939 (53 Stat. 1196, as amended by 64 Stat. 463 (43 U.S.C. 387)), National Fish and Wildlife Act of 1956 (Pub. L. 84–1024 (16 U.S.C. 742a, *et seq.*)), the Fish and Wildlife Coordination Act (Pub. L. 73–121 (16 U.S.C. 661 *et seq.*)), the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Eagle Protection Act (16 U.S.C. 668 *et seq.*), the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*), the American Indian Religious Freedom Act (42 U.S.C. 1996), and the

Religious Freedom Restoration Act (42 U.S.C. 2000bb).

I reserve the authority to make further waivers from time to time as I may determine to be necessary under section 102 of the IIRIRA, as amended.

Dated: September 5, 2017.

Elaine Duke,

Acting Secretary of Homeland Security.

[FR Doc. 2017–19234 Filed 9–11–17; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6001–N–31]

60-Day Notice of Proposed Information Collection: FHA-Insured Mortgage Loan Servicing of Delinquent, Default and Foreclosure With Service Members Act

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 13, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Ivery W. Himes, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: FHA-Insured Mortgage Loan Servicing of Delinquent, Default and Foreclosure with Service Members Act.

OMB Approval Number: 2502–0584.

Type of Request: Extension of currently approved collection.

Form Numbers:

HUD–2008–5–FHA Save Your Home Tips to Avoid Foreclosure Brochure
HUD 9539 Request for Occupied Conveyance
HUD 92070 Servicemembers Civil Relief Act Notice Disclosure
HUD 92068–A Monthly Delinquent Loan Report
HUD–50012 Mortgagee's Request for Extensions of Time

Description of the Need for the Information and Proposed Use: This information collection covers the mortgage loan servicing of FHA-insured loans that are delinquent, in default or in foreclosure. The data and information provided is essential for managing HUD's programs and the FHA's Mutual Mortgage Insurance Fund (MMI).

Respondents (*i.e.* affected public): Business or other for-profit.

Estimated Number of Respondents: 357 (FHA); 250 (VA); 7000 (Conventional Prime); 199 (Conventional Sub-Prime).

Estimated Number of Responses: 138,356,378.

Frequency of Response: On occasion.

Average Hours per Response: 10 minutes to 15 minutes.

Total Estimated Burdens: 10,912,815.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 1, 2017.

Dana T. Wade,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2017–19326 Filed 9–11–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6001–N–32]

60-Day Notice of Proposed Information Collection: Application for Fee or Roster Personnel (Appraisers and Inspectors) Designation and Appraisal Reports

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 13, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Cheryl Walker, Director, Home

Valuation Policy Division, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Elissa Saunders at *Cheryl.B.Walker@hud.gov* or telephone 202–402–6880. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Application for Fee or Roster Personnel (Appraisers and Inspectors) Designation and Appraisal Reports.

OMB Approval Number: 2502–0538.

Type of Request: Extension.

Form Number: HUD 92563A, HUD92563I, HUD 92564–CN, Fannie Mae Forms: 1004, 1004c, 1025, 1073, 1075, 2055 and 1004MC.

Description of the Need for the Information and Proposed Use: Accurate and thorough Appraisal reporting is critical to the accuracy of underwriting for the mortgage insurance process. The need for accuracy is increased for FHA isured mortgage since buyers tend to have more limited income and lower equity in the properties. This collection of information provides a more thorough and complete appraisal of prospective HUD-insured single-family properties ensuring that mortgages are acceptable for FHA insurance and thereby protect the interest of HUD, the taxpayers, and the FHA insurance fund. The collection allows HUD to maintain an effective appraisal program with the ability to discipline appraisers and inform potential homeowners of the benefits of purchasing an independent home inspection.

Respondents: Business or other for profit.

Estimated Number of Respondents: 21,315.

Estimated Number of Responses: 524,815.

Frequency of Response: On occasion.

Average Hours per Response: .05.

Total Estimated Burdens: 26,240.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 1, 2017.

Dana T. Wade,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2017–19327 Filed 9–11–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[17X.LLWO310000.L13100000.PP0000; OMB Control Number 1004–0137]

Agency Information Collection Activities; Onshore Oil and Gas Operations and Production

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Land Management (BLM), are proposing renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before November 13, 2017.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Washington, DC 20240, Attention: Jean Sonneman; by email to *jesonnem@blm.gov.* Please reference OMB Control Number 1004–0137 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Subijoy Dutta by email at *sdutta@blm.gov,* or by telephone at 202–912–7152.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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.

Abstract: Various Federal and Indian mineral leasing statutes authorize the BLM to grant and manage onshore oil and gas leases on Federal and Indian (except Osage Tribe) lands. In order to fulfill its responsibilities under these statutes, the BLM needs to perform the information collection (IC) activities set forth in the regulations at 43 CFR parts 3160 and 3170, and in onshore oil and gas orders promulgated in accordance with 43 CFR 3164.1. The BLM requests renewal of this control number. The BLM also requests revision of this control number as the result of the rules and the order that are listed in the following table:

RECENT BLM ACTIONS THAT AFFECT IC ACTIVITIES IN CONTROL NO. 1004–0137

Title of order or rule	Regulatory information No.	**Federal Register** citation	Control No.
Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order Number 1, Approval of Operations (Final Order).	RIN 1004–AE37	82 FR 2906 (Jan. 10, 2017) ...	1004–0213 (expires March 31, 2020).
Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Site Security (Final Rule).	RIN 1004–AE15	81 FR 81356 (Nov. 17, 2016)	1004–0207 (expires Jan. 31, 2020).
Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Measurement of Oil (Final Rule).	RIN 1004–AE16	81 FR 81462 (Nov. 17, 2016)	1004–0209 (expires Jan. 31, 2020).
Waste Prevention, Production Subject to Royalties, and Resource Conservation (Final Rule).	RIN 1004–AE14	81 FR 83008 (Nov. 18, 2016)	1004–0211 (expires Jan. 31, 2018).

We are requesting that additions be made to control number 1004–0137 as a result of the rules on approval of operations, site security, and measurement of oil. We are also requesting removal of a historic IC activity (''Gas Flaring'') from control number 1004–0137 because the waste prevention rule removed the regulatory authority for that activity.

In addition to the rules and order listed above, we take note of a recent BLM rule on hydraulic fracturing and a recent federal district court ruling. On June 21, 2016, the U.S. District Court for the District of Wyoming set aside a BLM rule on hydraulic fracturing (80 FR 16128 (March 26, 2015). See *Wyoming* v. *U.S. Department of the Interior,* Order on Petition for review of Final Agency Action, Case No. 2:15–CV/043–SWS (D. Wyo.). Previously, the court had issued an order postponing the effective date of the rule. Thus, the rule never became effective, and its pre-approved control number (1004–0203) has never been activated. As a result, we are requesting continuation of the IC activity that would have been discontinued (and would have been replaced with new regulations on hydraulic fracturing) had the final rule become effective. That IC activity (*i.e.,* collection of information on nonroutine fracturing jobs) does not at present appear on the list of IC activities authorized under 43 CFR 3162.3–2 (''Subsequent Well Operations''). However, we intend to conduct a rulemaking in the near future to correct that omission.

Title of Collection: Onshore Oil and Gas Operations and Production (43 CFR parts 3160 and 3170).

OMB Control Number: 1004–0137.

Form Numbers: Form 3160–3, Form 3160–4, Form 3160–5, and Form 3160–6.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Oil and gas operators on public lands and some Indian lands.

Total Estimated Number of Annual Respondents: 7,500.

Total Estimated Number of Annual Responses: 301,663.

Estimated Completion Time per Response: Varies from 45 minutes to 40 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 1,762,713.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion, except for the activities listed in the following table:

Type of response	Regulatory cite(s)	Frequency
Request for Approval of a CAA	43 CFR 3173.15	Once.
Response to Notice of Insufficient CAA	43 CFR 3173.16	Once.
Request for Approval of an FMP for Future Measurement Facilities	43 CFR 3173.12(d)	Once.
Request for Approval of an FMP for Existing Measurement Facilities	43 CFR 3173.12(e)	Once.
Measurement Tickets	43 CFR 3174.12	Monthly.

Total Estimated Annual Nonhour Burden Cost: $28,830,000.

The following table details the individual components and respective hour burden estimates of this information collection request:

Type of response	Number of responses	Hours per response	Total hours (column B × column C)
A.	B.	C.	D.
Application for Permit to Drill or Re-enter; 43 CFR 3162.3–1, 3164.1, 3172.3–1, and Section III.A. of Onshore Order 1; Form 3160–3 and Related Information	3,000	8	24,000
Subsequent Well Operations; 43 CFR 3162.3–2; Form 3160–5; On Occasion	15,100	8	120,800
Plan for Well Abandonment; 43 CFR 3162.3–4	1,500	8	12,000
Well Completion or Recompletion Report and Log; 43 CFR 3162.4–1(a), (b), (d), and (e); Form 3160–4 and Related Information	5,000	4	20,000
Notification of Production Start or Resumption; 43 CFR 3162.4–1(c); Form 3160–5	1,000	8	8,000
Samples, Tests, and Surveys; 43 CFR 3162.4–2	110	8	880
Disposal of Produced Water; 43 CFR 3162.5–1(b), 3164.1, and Onshore Oil and Gas Order No. 7	1,500	8	12,000
Report of Spills, Discharges, or Other Undesirable Events; 43 CFR 3162.5–1(c)	215	8	1,720
Contingency Plan; 43 CFR 3162.5–1(d)	52	32	1,664
Horizontal and Directional Drilling; 43 CFR 3162.5–2(b)	2,100	8	16,800
Well Markers; 43 CFR 3162.6	1,000	8	8,000

Type of response	Number of responses	Hours per response	Total hours (column B × column C)
A.	B.	C.	D.
Notice of Staking; 43 CFR 3164.1 and Section III.C. of Onshore Order 1	300	16	4,800
Waiver Request; 43 CFR 3164.1 and Section III.I. of Onshore Order 1	150	4	600
Application for Suspension or Other Relief; 43 CFR 3165.1	100	16	1,600
State Director Review; 43 CFR 3165.3(b)	55	16	880
Variance Requests; 43 CFR 3170.6; Form 3160–5	100	8	800
Site Facility Diagrams; 43 CFR 3173.11; Form 3160–5	9,156	8	73.248
Request for Approval of an FMP for Future Measurement Facilities; 43 CFR 3173.12(d); Form 3160–5; One-Time	1,000	8	8,000
Request for Approval of an FMP for Existing Measurement Facilities; 43 CFR 3173.12(e); Form 3160–5; One-Time	166,232	8	1,329,856
Modifications to an FMP; 43 FR 3173.13(b)(1); Form 3160–5	1,000	8	8,000
Request for Approval of a CAA; 43 CFR 3173.15; Form 3160–5 and Related Information; One-Time	2,162	40	86,480
Response to Notice of Insufficient CAA; 43 CFR 3173.16; Form 3160–5 and Related Information	150	40	6,000
Request to Modify or Terminate a CAA; 43 CFR 3173.18 and 3173.20; Form 3160–5 and Related Information	500	40	20,000
Request for Approval or Termination of Off-Lease Measurement; 43 CFR 3173.23 and 3173.27; Form 3160–5 and Related Information	166	10	1,660
Response to Notice of Insufficient Off-Lease Measurement Approval; 43 CFR 3173.25; Form 3160–5 and Related Information	15	40	600
Measurement Tickets; 43 CFR 3174.12; Monthly	90,000	0.75	67,500
Totals	301,663	.....	1,762,713

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 authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2017–19284 Filed 9–11–17; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[17XL 1109AF LLUT92000 L13100000 FI0000 241A]

Notice of Proposed Class II Reinstatement of Terminated Oil and Gas Leases, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reinstatement.

SUMMARY: In accordance with Title IV of the Federal Oil and Gas Royalty Management Act, Crescent Point Energy and EnCana Oil & Gas USA Inc. timely filed a petition for reinstatement of oil and gas leases UTU74837 and UTU75675 for lands in Uintah County, Utah, along with all required rentals and royalties accruing from October 1, 2014, the date of termination. The Bureau of Land Management proposes to reinstate the leases.

FOR FURTHER INFORMATION CONTACT: Kent Hoffman, Deputy State Director, Lands and Minerals, Utah State Office, Bureau of Land Management (BLM), 440 West 200 South, Suite 500, Salt Lake City, Utah, 84101, phone 801–539–4063, Email: *khoffman@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to new lease terms for rental and royalty. The rental for UTU74837 and UTU75675 will increase to $10 per acre and the royalty to 16⅔ percent. The $500 administrative fee for the leases has been paid, and the lessee has reimbursed the BLM for the cost of publishing this Notice.

The following-described lands in Uintah County, Utah, include:

UTU74837

Salt Lake Meridian, Utah

T. 7 S., R 20 E.,
Sec. 29, NE1/4SW1/4, N1/2SE1/4, SE1/4SE1/4.

The area described contains 160 acres.

UTU75675

Salt Lake Meridian, Utah

T. 7 S., R 20 E.,
Sec. 6, S1/2SE1/4;
Sec. 7: N1/2NE1/4.

The area described contains 160 acres.

As the lessee has met all of the requirements for reinstatement of the leases set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the BLM is proposing to reinstate the leases 30 days following publication of the Notice, with an effective date of Sept. 1, 2014, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

The leases are subject to the new terms and conditions and the increased rental and royalty rates cited above, and an extension for 2 years from the date the leases are reinstated in accordance with 43 CFR 3108.2–3(e). Three lease notices are being added to UTU75675, (1) UT–LN–131: Sage Grouse Net Conservation Gain; (2) UT–LN–132: Sage Grouse Required Design Features; and (3) UT–LN–133: Greater Sage Grouse Buffer.

Authority: Mineral Leasing Act of 1920 (30 U.S.C. 188).

Edwin L. Roberson,

State Director.

[FR Doc. 2017–19345 Filed 9–11–17; 8:45 am]

BILLING CODE 4310–DQ–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 Industrial Automation Systems and Components Thereof Including Control Systems, Controllers, Visualization Hardware, Motion and Motor Control Systems, Networking Equipment, Safety Devices, and Power Supplies, DN 3249;* 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 Rockwell Automation, Inc. on September 6, 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 industrial automation systems and components thereof including control systems, controllers, visualization hardware, motion and motor control systems, networking equipment, safety devices, and power supplies. The complaint names as respondents Can Electric Limited of China; Capnil (HK) Company Limited of Hong Kong; Fractioni (Hongkong) Ltd. of China; Fujian Dahong Trade Co., Ltd. of China; GreySolution Limited d/b/a Fibica of Hong Kong; Huang Wei Feng d/b/a A–O–M Industry of China; KBS Electronics Suzhou Co, Ltd., of China; PLC–VIP Shop d/b/a VIP Tech Limited of Hong Kong; Radwell International, Inc. d/b/a PLC Center of Willingboro, NJ; Shanghai EuoSource Electronic Co., Ltd. of China; ShenZhen T-Tide Trading Co., Ltd. of China; SoBuy Commercial (HK) Co. Limited of Hong Kong; Suzhou Yi Micro Optical Co., Ltd. d/b/a Suzhou Yiwei Guangxue Youxiangongsi d/b/a Easy Micro-optics Co. LTD. of China; Wenzhou Sparker Group Co. Ltd. d/b/a Sparker Instruments of China, and Yaspro Electronics (Shanghai) Co., Ltd. of China. The complainant requests that the Commission issue a general 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. 3249'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 6, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–19224 Filed 9–11–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–480 and 731–TA–1188 (Review)]

High Pressure Steel Cylinders From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty and countervailing duty orders on high pressure steel cylinders from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: August 4, 2017.

FOR FURTHER INFORMATION CONTACT: Celia Feldpausch (*celia.feldpausch@usitc.gov;* (202) 205–2387), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 4, 2017, the Commission determined that the domestic interested party group response to its notice of institution (82 FR 20373, May 1, 2017) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)). For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on September 21, 2017, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution, and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before September 26, 2017 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by September 26, 2017. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 7, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–19282 Filed 9–11–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0100]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Report of Multiple Sale or Other Disposition of Certain Rifles—ATF Form 3310.12

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

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 November 13, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any additional information, please contact Ed Stely, Branch Chief, Tracing Operations and Records Management Branch, National Tracing Center Division, either by mail at 244 Needy Road, Martinsburg, WV 25405, or by email at *Edward.Stely@atf.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 (check justification or form 83):* Revision of a currently approved collection.

2. *The title of the form/Collection:* Report of Multiple Sale or Other Disposition of Certain Rifles.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 3310.12.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): None.

Abstract: The purpose of this information collection is to continue a requirement that Federal firearms licensees report multiple sales or other dispositions whenever the licensee sells or otherwise disposes of two or more rifles to the same person at one time or within any five consecutive business days with the following characteristics: (a) Semi-automatic; (b) a caliber greater than .22; and (c) the ability to accept a detachable magazine. This requirement will apply to Federal Firearms Licensees (FFLs) who are dealers and/or pawnbrokers in Arizona, California, New Mexico and Texas.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,000 respondents will utilize the form to respond twice to this collection, and it will take each respondent approximately 12 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 400 hours which is equal to (1000 (total number of respondents) * 2 (total # of responses) * .2 (12 minutes).

7. *An explanation of the change in estimates:* The adjustments associated with this collection are a decrease in the number of respondents by 1,509, and a reduction in the collection burden hours by 3,215.

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: September 7, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–19335 Filed 9–11–17; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decrees Under the Clean Water Act and Resource Conservation and Recovery Act

On August 28, 2017, the Department of Justice lodged a proposed consent decree with the United States District Court for the Northern District of Georgia in the lawsuit entitled *United States of America and State of Georgia* v. *Woco Pep Oil, Inc.,* Civil Action No. 1:17–cv–3249.

The United States and State of Georgia filed this lawsuit under the Clean Water Act (''CWA'') and the Resource Conservation and Recovery Act (''RCRA''). The complaint names Woco Pep Oil, Inc. as defendant. The complaint seeks injunctive relief necessary for the Defendant to achieve compliance with the CWA and RCRA, as well as the imposition of civil penalties for violations of the law. Under the proposed Consent Decree, the defendant agrees to pay a civil penalty of $24,000 to be divided evenly between the State and the United States. The Defendant further agrees under the proposed Consent Decree to perform injunctive relief which will bring it into compliance with the law and to perform a Supplemental Environmental Project (''SEP''). The SEP requires the Defendant to install advanced technology to improve leak detection at its facilities that exceeds the minimum standards set forth in applicable regulations.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Georgia* v. *Woco Pep Oil, Inc.,* D.J. Ref. No. 90–7–1–10401. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decrees may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the consent decrees upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $16.50 for the Consent Decree (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–19300 Filed 9–11–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Second Modification to Consent Decree Under The Clean Air Act

On August 31, 2017, the Department of Justice lodged a proposed second modification to consent decree with the United States District Court for the Southern District of West Virginia in the lawsuit entitled *United States* v. *Bayer CropScience LP,* Civil Action No. 2:15–cv–13331.

The United States filed this lawsuit under the Clean Air Act. The United States' complaint alleges that Bayer CropScience violated section 112(r) of the Clean Air Act, 42 U.S.C. 7412(r), which addresses the prevention of accidental releases. The claims arise out of a 2008 explosion at the Methomyl production unit at Bayer CropScience's plant in Institute, West Virginia. The original consent decree, which was entered by the court on August 9, 2016, required the defendant, Bayer CropScience LP, to pay a civil penalty of $975,000, to perform injunctive relief to reduce the likelihood of future accidents at the Institute Plant and several other chemical processing plants, and to perform supplemental environmental projects valued collectively at $4.23 million. The proposed modification replaces one of the supplemental environmental projects, which entailed expanding a wastewater sump, with another project that entails purchasing emergency response equipment. As a result, the total cost of the supplemental environmental projects will decrease to $3.05 million.

The publication of this notice opens a period for public comment on the proposed second modification to consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Bayer CropScience LP,* D.J. Ref. No. 90–5–2–1–10802. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees/.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–19332 Filed 9–11–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hoist Operators' Physical Fitness

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Hoist Operators' Physical Fitness'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 12, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201706-1219-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Hoist Operators' Physical Fitness information collection requirements codified in regulations 30 CFR 56.19057 and 57.19057 that require the annual examination and certification of a hoist operator's fitness by a qualified, licensed physician that includes documentation and recordkeeping requirements. The safety of all metal and nonmetal miners riding hoist conveyances is largely dependent upon the attentiveness and physical capabilities of the hoist operator. Improper movements, over-speed, and over-travel of a hoisting conveyance can result in serious physical harm or death to all passengers. Federal Mine Safety and Health Act of 1977 sections 101(a) and 103(h) authorize this information collection. *See* 30 U.S.C. 811(a) and 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is

generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0049.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on September 30, 2017. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 12, 2017 (82 FR 17695).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0049. The OMB is particularly interested in comments that:

- 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;
- Enhance the quality, utility, and clarity of the information to be collected; 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.

Agency: DOL–MSHA.

Title of Collection: Hoist Operators' Physical Fitness.

OMB Control Number: 1219–0049.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 115.

Total Estimated Number of Responses: 575.

Total Estimated Annual Time Burden: 19 hours.

Total Estimated Annual Other Costs Burden: $182,275.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 6, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017–19238 Filed 9–11–17; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (17–061)]

Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Advisory Committee (ESAC). The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, October 2, 2017, 1:30 p.m.–3:30 p.m., Eastern Daylight Time.

ADDRESSES: This meeting will be open to the public telephonically. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the USA toll free number 1–800–369–3189, passcode 9725782, followed by the # sign, to participate in this meeting by telephone.

FOR FURTHER INFORMATION CONTACT: KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov.*

The agenda for the meeting includes the following topic:

—Earth Science Division Senior Review—Report by the ESAC Senior Review Subcommittee

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2017–19307 Filed 9–11–17; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–062]

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of a request for comments regarding a new information collection.

SUMMARY: As part of the Federal Government-wide ongoing effort to streamline how agencies request feedback from the public on services (also called ''service delivery''), we are proposing to renew a generic information collection request (generic ICR) entitled Generic Clearance for Collecting Qualitative Feedback on Agency Services (previously entitled Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery). This notice announces that we have submitted this generic ICR plan to OMB for renewed approval under the Paperwork Reduction Act and solicits comments on specific aspects of the collection plan.

DATES: OMB must receive written comments at the address below on or before October 12, 2017.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, desk officer for NARA, by mail to Office of Management and Budget; New Executive Office Building; Washington, DC 20503; by fax to 202–395–5167; or by email to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Tamee Fechhelm by telephone at 301–837–1694 or by fax at 301–837–0319.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), we invite comments on: (a) Whether collecting this information is necessary for proper performance of the agency's functions, including whether the information will have practical utility; (b) the accuracy of

our estimate of the information collection's burden on respondents; (c) ways to enhance the quality, utility, and clarity of the information we propose to collect; (d) ways to minimize the burden on respondents of collecting the information, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources people need to provide the information, including time to review instructions, process and maintain the information, search data sources, and respond.

Explanation of Generic ICRs

A generic ICR is a request for OMB to approve a plan for conducting more than one information collection using very similar methods when (1) we can evaluate the need for and the overall practical utility of the data in advance, as part of the review of the proposed plan, but (2) we cannot determine the details of the specific individual collections until a later time. Most generic clearances cover collections that are voluntary, low-burden (based on a consideration of total burden, total respondents, or burden per respondent), and uncontroversial. This notice, for example, describes a general plan to gather views from the public through a series of customer satisfaction surveys in which we ask the public about certain agency activities or services and how well we are providing them. As part of this plan, we construct, distribute, and analyze the surveys in a similar manner, but customize each survey for the type of service it is measuring.

Because we seek public comment on the plan, we do not need to seek public comment on each specific information collection that falls within the plan when we later develop the individual information collection. This saves the Government time and burden, and it streamlines our ability to gather performance feedback. However, we still submit each specific information collection (*e.g.,* each survey) to OMB for review, in accordance with the terms of clearance set upon approval of the plan. OMB assesses the individual surveys for PRA requirements, ensures that they fit within the scope of this generic ICR plan, and includes the specific surveys in the PRA public docket prior to our use of them.

Specifics on This Information Collection

Title: Generic Clearance for Collecting Qualitative Feedback on Agency Services.

Description: This generic information collection request allows us to gather qualitative customer and stakeholder feedback in an efficient, timely manner as part of our commitment to improve service delivery. By qualitative feedback, we mean information that provides useful insights into customers' or stakeholders' perceptions and opinions, but not statistical surveys that yield quantitative results that we could generalize to the population. Qualitative feedback provides insights into perceptions, experiences, and expectations, provides an early warning of issues with service, or focuses attention on areas where communication, training, or operational changes might improve delivery of products or services. We will not use this qualitative generic clearance for quantitative information collections designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

Purpose: Collecting this information allows us to receive ongoing, collaborative, and actionable communications from our customers and stakeholders. We use customer feedback to plan efforts to improve or maintain the quality of service we offer to the public. If we do not collect this information, vital feedback from customers and stakeholders on our services will be unavailable. The feedback we collect about our services include assessments of timeliness, appropriateness, accuracy of information, plain language, courtesy, efficiency, and issue resolution.

Conditions: We will submit a specific information collection for approval under this generic clearance only if it meets the following conditions:

- The collection is voluntary;
- The collection is low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and is low-cost for both the respondents and the Federal Government;
- The collection is non-controversial and does not raise issues of concern to other Federal agencies;
- It is targeted to solicit opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

As a general matter, information collections under this generic collection request will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current actions: We currently have 18 surveys that have been approved by OMB under this generic ICR that are ongoing and will continue through the renewal period. Some of these surveys include the OGIS Customer Service Assessment, NPRC Survey of Customer Satisfaction, Training and Event Evaluation, Public Vaults Exhibition Survey, Boeing Learning Center Visit Drivers, History Hub Survey, Agency Assistance Project Feedback Survey, National Archives and Records Administration Customer Survey, and the National Outreach Program Initiative (NOPI) Master Survey.

Type of review: Regular.

Potential affected public: Anyone who uses NARA's services, programs, or facilities, including requesting personnel records, requesting historical, genealogical, or other archival records, using research rooms, requesting research or asking research questions, ordering and receiving reproductions, using FOIA dispute resolution services, using records management services, working with records management schedules, renting facilities, attending exhibitions, events, or open houses, using learning centers or educational materials, attending training, etc. This can include individuals and households, businesses and organizations, or state, local, or Tribal governments.

Estimated number of respondents: We currently have approximately 25,000 respondents annually to our 18 surveys. We are completely restructuring one of the surveys, the NPRC Survey of Customer Satisfaction, and migrating it

from paper to online form. We anticipate that this will substantially increase the number of potential respondents to that survey from about 10,000 to 100,000 potential respondents. In addition, we expect to add and remove some additional surveys during the next three years, which might also result in a net decrease or increase in potential respondents. Therefore, we are projecting that between 120,000 and 150,000 respondents annually.

Projected average estimates for the next three years:

Average expected annual number of surveys: 12.

Average projected number of respondents per survey: 12,994.

Annual responses per respondent: 1.

Frequency of response: Once per request.

Average minutes per response: 10–30 minutes, depending on the survey.

Burden hours: 20,000–25,000.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2017–19330 Filed 9–11–17; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–061]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by October 12, 2017. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Farm Service Agency (DAA–0145–2017–0024, 1 item, 1 temporary item). Records related to hazardous waste, including site files, interagency agreements, and contracts.

2. Department of the Army, Agency-wide (DAA–AU–2017–0005, 1 item, 1 temporary item). Master files of an electronic information system used to manage the status of members of the Continuity of Operations Program for the headquarters office of the Department of the Army staff.

3. Department of the Army, Agency-wide (DAA–AU–2017–0006, 1 item, 1 temporary item). Master files of an electronic information system that creates components of safety certificates for transportation and handling of hazardous materials.

4. Department of Commerce, National Oceanic and Atmospheric Administration, (DAA–0370–2017–0002, 1 item, 1 temporary item). Master

files of an electronic information system used to facilitate discovery and FOIA response relating to fisheries investigation case files.

5. Department of Homeland Security, Bureau of Customs and Border Protection (DAA–0568–2017–0011, 3 items, 3 temporary items). Records include law enforcement training program accreditations, student training files, and peer support program records.

6. Department of Homeland Security, Immigration and Customs Enforcement (DAA–0567–2017–0004, 1 item, 1 temporary item). Master file of an electronic information system used to manage travel documents, such as temporary passports, that allows individuals to obtain travel documents from country of origin to travel internationally.

7. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2017–0004, 1 item, 1 temporary item). District office files related to enforcement actions carried out prior to 1955, by the Immigration and Naturalization Service, which were not integrated into the immigrants' files.

8. Department of Justice, Justice Management Division (DAA–0060–2017–0028, 3 items, 3 temporary items). Records summarizing adverse action and background investigations, and suitability appeal files.

9. National Indian Gaming Commission, Agency-wide (DAA–0600–2017–0011, 2 items, 2 temporary items). Master files of an electronic information system containing Indian casino site visit data and casino applicant credentialing data.

10. Peace Corps, Office of the Director (DAA–0490–2017–0006, 2 items, 1 temporary item). Records of the Let Girls Learn Program including routine administrative support records and correspondence. Proposed for permanent retention are high level correspondence and policies associated with the program.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2017–19279 Filed 9–11–17; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–063]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving notice that it has submitted to OMB for approval the information collection described in this notice. We invite you to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: OMB must receive written comments at the address below on or before October 12, 2017.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, desk officer for NARA, by mail to Office of Management and Budget; New Executive Office Building; Washington, DC 20503; by fax to 202–395–5167; or by email to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or copies of the proposed information collection and supporting statement to Tamee Fechhelm by phone at 301–837–1694 or by fax at 301–837–0319.

SUPPLEMENTARY INFORMATION:

Information Collection Process

Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on information collections we propose to renew. We submit proposals to renew information collections first through a public comment period and then to OMB for review and approval pursuant to the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*). We published a notice of proposed renewal for this information collection on June 14, 2017 (82 FR 27289), and we received no comments. We have therefore submitted the described information collection to OMB for approval.

Request for Comments

We invite comments on: (a) Whether collecting this information is necessary for proper performance of the agency's functions, including whether the information will have practical utility; (b) the accuracy of our estimate of the information collection's burden on respondents; (c) ways to enhance the quality, utility, and clarity of the information we propose to collect; (d) ways to minimize the burden on respondents of collecting the information, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources people need to provide the information, including time to review instructions, process and maintain the information, search data sources, and respond.

Specifics on This Information Collection

Title: NARA Visitors Study.
OMB number: 3095–0067.
Agency form number: N/A.
Abstract: The general purpose of this voluntary data collection is to benchmark the performance of NARA in relation to other history museums. Information collected from visitors will assess the overall impact, expectations, presentation, logistics, motivation, demographic profile and learning experience. Once analysis has been done, this collected information will assist NARA in determining their success in achieving its goals.
Type of review: Regular.
Affected public: Individuals who visit the National Archives Museum in Washington, DC.
Estimated number of respondents: 200.
Estimated time per response: 12 minutes.
Frequency of response: On occasion (when an individual visits the National Archives Museum in Washington, DC between July–October 2018 and July–October 2020).
Estimated total annual burden hours: 40 hours.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2017–19331 Filed 9–11–17; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0274]

Information Collection: NRC Form 445, "Request for Approval of Foreign Travel"

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public

comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 445, ''Request for Approval of Foreign Travel.''

DATES: Submit comments by November 13, 2017. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0274. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–2 F43, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: 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.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0274 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0274. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2016–0274 on this Web site.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML17216A768. The supporting statement is available in ADAMS under Accession No. ML17069A044.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2016–0274 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 in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 445, ''Request for Approval of Official Foreign Travel.''

2. *OMB approval number:* 3150–0193.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Form 445, ''Request for Approval of Foreign Travel.''

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* Contractors, consultants and invited NRC travelers who travel in the course of conducting business for the NRC.

7. *The estimated number of annual responses:* 50.

8. *The estimated number of annual respondents:* 50.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 50 (1 hour per form).

10. *Abstract:* Consultants, contractors, and those invited by the NRC to travel (*e.g.,* prospective employees) must file travel vouchers and trip reports in order to be reimbursed for their travel expenses. The information collected includes the name, address, social security number, and the amount to be reimbursed. Travel expenses that are reimbursed are confined to those expenses essential to the transaction of official business for an approved trip.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 6th day of September, 2017.

For the Nuclear Regulatory Commission.

Dave Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2017–19333 Filed 9–11–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0189]

Biweekly Notice: Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from August 15, 2017 to August 28, 2017. The last biweekly notice was published on August 29, 2017.

DATES: Comments must be filed by October 12, 2017. A request for a hearing must be filed by November 13, 2017.

ADDRESSES: You may submit comments by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0189. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: TWFN–8–D36M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Paula Blechman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2242; email: *Paula.Blechman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0189, facility name, unit numbers, plant docket number, application date, and subject 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–2017–0189.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0189, facility name, unit numbers, plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at

hearing.docket@nrc.gov, or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly-available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: June 29, 2017. A publicly available version is in ADAMS under Accession No. ML17180A538.

Description of amendment request: The amendments would adopt changes, with variations, based on the NRC-approved safety evaluation of Technical Specifications Task Force (TSTF) Traveler TSTF–542, Revision 2, ''Reactor Pressure Vessel Water Inventory Control,'' dated December 20, 2016 (ADAMS Package Accession No. ML16343B066). The revisions would replace existing technical specification (TS) requirements related to ''operations with a potential for draining the reactor vessel'' (OPDRVs) with new requirements on reactor pressure vessel water inventory control (RPV WIC) to protect Safety Limit 2.1.1.3, which requires reactor vessel water level to be greater than the top of active irradiated fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.1.3. Draining of RPV [reactor pressure vessel] water inventory in Mode 4 (*i.e.,* cold shutdown) and Mode 5 (*i.e.,* refueling) is not an accident previously evaluated and, therefore, replacing the existing TS controls to prevent or mitigate such an event with a new set of controls has no effect on any accident previously evaluated. RPV water inventory control in Mode 4 or Mode 5 is not an initiator of any accident previously evaluated. The existing OPDRV controls or the proposed RPV WIC controls are not mitigating actions assumed in any accident previously evaluated.

The proposed change reduces the probability of an unexpected draining event, which is not a previously evaluated accident, by imposing new requirements on the limiting time in which an unexpected draining event could result in the reactor vessel water level dropping to the top of the active fuel (TAF). These controls require cognizance of the plant configuration and control of configurations with unacceptably short drain times. These requirements reduce the probability of an unexpected draining event. The current TS requirements are only mitigating actions and impose no requirements that reduce the probability of an unexpected draining event. The proposed change reduces the consequences of an unexpected draining event, which is not a previously evaluated accident, by requiring an Emergency Core Cooling System (ECCS) subsystem to be operable at all times in Modes 4 and 5. The current TS requirements do not require any water injection systems, ECCS or otherwise, to be operable in certain conditions in Mode 5. The change in requirement from two ECCS subsystems to one ECCS subsystem in Modes 4 and 5 does not significantly affect the consequences of an unexpected draining event because the proposed Actions ensure equipment is available within the limiting drain time that is as capable of mitigating the event as the current requirements. The proposed controls provide escalating compensatory measures to be established as calculated drain times decrease, such as verification of a second method of water injection and additional confirmations that containment and/or filtration would be available if needed. The proposed change reduces or eliminates some requirements that were determined to be unnecessary to manage the consequences of an unexpected draining event, such as automatic initiation of an ECCS subsystem and control room ventilation. These changes do not affect the consequences of any accident previously evaluated since a draining event in Modes 4 and 5 is not a previously evaluated accident and the requirements are not needed to adequately respond to a draining event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.1.3. The proposed change will not alter the design function of the equipment involved. Under the proposed change, some systems that are currently required to be operable during OPDRVs would be required to be available within the limiting drain time or to be in service depending on the limiting drain time. Should those systems be unable to be placed into service, the consequences are no different than if those systems were unable to perform their function under the current TS requirements. The event of concern under the current requirements and the proposed change is an unexpected draining event. The proposed change does not create new failure mechanisms, malfunctions, or accident initiators that would cause a draining event or a new or different kind of accident not previously evaluated or included in the design and licensing bases.

Thus, based on the above, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change replaces existing TS requirements related to OPDRVs with new requirements on RPV WIC. The current requirements do not have a stated safety basis and no margin of safety is established in the licensing basis. The safety basis for the new requirements is to protect Safety Limit 2.1.1.3. New requirements are added to determine the limiting time in which the RPV water inventory could drain to the top of the fuel in the reactor vessel, should an unexpected draining event occur. Plant configurations that could result in lowering the RPV water level to the TAF within one hour are now prohibited. New escalating compensatory measures based on the limiting drain time replace the current controls. The proposed TS establish a safety margin by providing defense-in-depth to ensure that the Safety Limit is protected and to protect the public health and safety. While some less restrictive requirements are proposed for plant configurations with long calculated drain times, the overall effect of the change is to improve plant safety and to add safety margin.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kathryn B. Nolan, Deputy General Counsel, 550 South Tryon Street, M/C DEC45A, Charlotte, NC 28202.

NRC Branch Chief: Undine Shoop.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant (PNP), Van Buren County, Michigan

Date of amendment request: July 27, 2017. A publicly-available version is in ADAMS under Accession No. ML17208A428.

Description of amendment request: The proposed amendment would revise certain staffing and training requirements, reports, programs, and editorial changes in the Technical Specifications (TSs) Table of Contents; Section 1.0, ''Use and Application''; and Section 5.0, ''Administrative Controls,'' that will no longer be applicable once PNP is permanently defueled.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment would not take effect until the PNP Certified Fuel Handler Training and Retraining Program has been approved by the NRC, and PNP has permanently ceased operation and entered a permanently defueled condition. The proposed changes would revise the PNP TS by modifying the definitions, in TS Section 1.0, and administrative controls, in TS Section 5.0, to correspond to the permanently defueled condition. Additionally, certain portions of the administrative control sections are deleted because they are no longer applicable to a permanently defueled facility.

The proposed deletion and modification of provisions of the administrative controls do not directly affect the design of structures, systems, and components (SSCs) necessary for safe storage of spent nuclear fuel or the methods used for handling and storage of such fuel in the spent fuel pool (SFP). The proposed changes to the administrative controls are administrative in nature and do not affect any accidents applicable to the safe management of spent nuclear fuel or the permanently shutdown and defueled condition of the reactor. Thus, the consequences of an accident previously evaluated are not increased.

In a permanently defueled condition, the only credible accidents are the fuel handling accident (FHA), the failure of tanks containing radioactive liquids, and a spent fuel cask drop accident. The probability of occurrence of previously evaluated accidents is not increased, because extended operation in a permanently defueled condition will be the only operation allowed. This mode of operation is bounded by the existing analyses. Additionally, the occurrence of postulated accidents associated with reactor operation are no longer credible in a permanently defueled reactor. This significantly reduces the scope of applicable accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment has no impact on facility systems, structures, and components (SSCs) affecting the safe storage of spent nuclear fuel, or on the methods of operation of such SSCs, or on the handling

and storage of spent nuclear fuel itself. The proposed amendment does not result in different or more adverse failure modes or accidents than previously evaluated because the reactor will be permanently shutdown and defueled, and PNP will no longer be authorized to operate the reactor or retain or place fuel in the reactor vessel.

The proposed amendment does not affect systems credited in the PNP accident analysis for a[n] FHA, or for mitigating accident releases from the failure of tanks containing radioactive liquids or from a spent fuel cask drop. The proposed changes will continue to require proper control and monitoring of safety significant parameters and activities.

The proposed amendment does not result in any new mechanisms that could damage the remaining relevant safety barriers that support maintaining the plant in a permanently shutdown and defueled condition (*e.g.,* fuel cladding and SFP cooling). Since extended operation in a defueled condition will be the only operation allowed, and this condition is bounded by existing analyses, such a condition does not create the possibility of a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment involves deleting and/or modifying certain TS requirements once the PNP has been permanently shutdown and defueled. As specified in 10 CFR 50.82(a)(2), the 10 CFR 50 license for PNP will no longer authorize operation of the reactor or emplacement or retention of fuel into the reactor vessel following submittal of the certifications required by 10 CFR 50.82(a)(1). Therefore, the occurrence of postulated accidents associated with reactor operation are no longer credible.

The only remaining credible accidents are the fuel handling accident (FHA), the failure of tanks containing radioactive liquids, and a spent fuel cask drop accident. The proposed amendment does not adversely affect the inputs or assumptions of any of the design basis analyses that impact these analyzed conditions.

The proposed changes are limited to those portions of the TS that are not related to the SSCs that are important to the safe storage of spent nuclear fuel. The requirements that are proposed to be revised or deleted from the PNP TS are not credited in the existing accident analysis for the remaining applicable postulated accidents, and as such, do not contribute to the margin of safety associated with the accident analysis. Postulated design basis accidents involving the reactor are no longer possible because the reactor will be permanently shutdown and defueled, and PNP will no longer be authorized to operate the reactor or retain or place fuel in the reactor vessel.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: Douglas A. Broaddus.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: July 18, 2017. A publicly-available version is in ADAMS under Accession No. ML17199F854.

Description of amendment request: The proposed change would revise the design value for the spent fuel storage pool in Technical Specification (TS) 4.3.2, ''Drainage,'' to an appropriate value, consistent with the original design basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

No physical changes to the facility will occur as a result of this proposed amendment. The proposed changes will not alter the physical design. The proposed change will revise the current TS 4.3.2 value for the SFP [spent fuel pool] level design to be consistent with the original design basis value and the applicable regulatory requirements. The proposed value will continue to ensure that inadvertent draining of the SFP will not result in the uncovering of spent fuel, as well as provide adequate shielding for personnel protection.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant. Accordingly, the change does not introduce any new accident initiators, nor does it reduce or adversely affect the capabilities of any plant structure, system, or component to perform their safety function. The proposed change will revise the current TS 4.3.2 value for the SFP level design to be consistent with the original design basis value and the applicable regulatory requirements. The proposed value will continue to ensure that inadvertent draining of the SFP will not result in the uncovering of spent fuel, as well as provide adequate shielding for personnel protection.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change conforms to NRC regulatory guidance regarding the content of plant Technical Specifications. The proposed change does not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: David J. Wrona.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: July 19, 2017. A publicly-available version is in ADAMS under Accession No. ML17200D096.

Description of amendment request: The amendments would replace existing technical specification (TS) requirements related to ''operations with a potential for draining the reactor vessel'' (OPDRVs) with new requirements on reactor pressure vessel (RPV) water inventory control (WIC) to protect Safety Limit 2.1.4. Safety Limit 2.1.4 requires RPV water level to be greater than the top of active irradiated fuel. The proposed changes are based on Technical Specifications Task Force (TSTF) Traveler TSTF–542, ''Reactor Pressure Vessel Water Inventory Control,'' Revision 2 (ADAMS Package Accession No. ML16250A231).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes replace existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.4. Draining of RPV water inventory in OPERATIONAL CONDITION 4 (*i.e.,* cold shutdown) and OPERATIONAL CONDITION 5 (*i.e.,* refueling), is not an accident previously evaluated and, therefore, replacing the existing TS controls to prevent or mitigate such an event with a new set of controls has no effect on any accident previously evaluated. RPV water inventory control in OPERATIONAL CONDITION 4 or 5 is not an initiator of any accident previously evaluated. The existing OPDRV controls or the proposed RPV WIC controls are not mitigating actions assumed in any accident previously evaluated.

The proposed changes reduce the probability of an unexpected draining event (which is not a previously evaluated accident) by imposing new requirements on the limiting time in which an unexpected draining event could result in the reactor vessel water level dropping to the top of the active fuel (TAF). These controls require cognizance of the plant configuration and control of configurations with unacceptably short drain times. These requirements reduce the probability of an unexpected draining event. The current TS requirements are only mitigating actions and impose no requirements that reduce the probability of an unexpected draining event.

The proposed changes reduce the consequences of an unexpected draining event (which is not a previously evaluated accident) by requiring an Emergency Core Cooling System (ECCS) subsystem to be operable at all times in OPERATIONAL CONDITIONS 4 and 5. The current TS requirements do not require any water injection systems, ECCS or otherwise, to be Operable in certain conditions in OPERATIONAL CONDITION 5. The change in requirement from two ECCS subsystems to one ECCS subsystem in OPERATIONAL CONDITIONS 4 and 5 does not significantly affect the consequences of an unexpected draining event because the proposed Actions ensure equipment is available within the limiting drain time that is as capable of mitigating the event as the current requirements. The proposed controls provide escalating compensatory measures to be established as calculated drain times decrease, such as verification of a second method of water injection and additional confirmations that containment and/or filtration would be available if needed.

The proposed changes reduce or eliminate some requirements that were determined to be unnecessary to manage the consequences of an unexpected draining event, such as automatic initiation of an ECCS subsystem and control room ventilation. These changes do not affect the consequences of any accident previously evaluated since a draining event in OPERATIONAL CONDITIONS 4 and 5 is not a previously evaluated accident and the requirements are not needed to adequately respond to a draining event.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes replace existing TS requirements related to OPDRVs with new requirements on RPV WIC that will protect Safety Limit 2.1.4. The proposed changes will not alter the design function of the equipment involved. Under the proposed changes, some systems that are currently required to be operable during OPDRVs would be required to be available within the limiting drain time or to be in service depending on the limiting drain time. Should those systems be unable to be placed into service, the consequences are no different than if those systems were unable to perform their function under the current TS requirements.

The event of concern under the current requirements and the proposed changes is an unexpected draining event. The proposed changes do not create new failure mechanisms, malfunctions, or accident initiators that would cause a draining event or a new or different kind of accident not previously evaluated or included in the design and licensing bases.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes replace existing TS requirements related to OPDRVs with new requirements on RPV WIC. The current requirements do not have a stated safety basis and no margin of safety is established in the licensing basis. The safety basis for the new requirements is to protect Safety Limit 2.1.4. New requirements are added to determine the limiting time in which the RPV water inventory could drain to the TAF in the reactor vessel should an unexpected draining event occur. Plant configurations that could result in lowering the RPV water level to the TAF within one hour are now prohibited. New escalating compensatory measures based on the limiting drain time replace the current controls. The proposed TS establish a safety margin by providing defense-in-depth to ensure that the Safety Limit is protected and to protect the public health and safety. While some less restrictive requirements are proposed for plant configurations with long calculated drain times, the overall effect of the change is to improve plant safety and to add safety margin.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Florida Power & Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: January 23, 2017, as supplemented by letter dated July 3, 2017. Publicly-available versions are in ADAMS under Accession Nos. ML17025A399 and ML17184A176, respectively.

Description of amendment request: The license amendment request was originally noticed in the **Federal Register** on March 28, 2017 (82 FR 15383). The notice is being reissued in its entirety to include the revised scope, description of the amendment request, and proposed no significant hazards consideration determination. As a result of the revised scope, updates to the ''Basis for proposed no significant hazards consideration determination'' section of this notice are delineated by brackets.

The amendments would modify the Technical Specifications (TSs) by limiting the MODE of applicability for the Reactor Protection System (RPS), Startup, and Operating Rate of Change of Power—High, functional unit trip. Additionally, the proposed amendments add new Limiting Condition for Operation (LCO) 3.0.5 and relatedly modifies LCO 3.0.1 and LCO 3.0.2, to provide for placing inoperable equipment under administrative control for the purpose of conducting testing required to demonstrate OPERABILITY.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Limiting the MODE 1 applicability for RPS functional unit, Startup and Operating Rate of Change of Power—High, to Power Range Neutron Flux Power ≤15% of RATED THERMAL POWER, is an administrative change in nature and does not alter the manner in which the functional unit is operated or maintained. The proposed changes do not represent any physical

change to plant [structures, systems, and components (SSC(s))], or to procedures established for plant operation. The subject RPS functional unit is not an event initiator nor is it credited in the mitigation of any event or credited in the [probabilistic risk assessment (PRA)]. As such, the initial conditions associated with accidents previously evaluated and plant systems credited for mitigating the consequences of accidents previously evaluated remain unchanged.

The proposed addition of new LCO 3.0.5 to the St. Lucie Unit 1 and Unit 2 TS and related modification to [LCO 3.0.1 and] LCO 3.0.2 is consistent with the guidance provided in NUREG–1432, Volume 1 [ADAMS Accession No. ML12102A165] (Reference 6.1 [of the amendment request]) and thereby has been previously evaluated by the Commission with a determination that the proposed change does not involve a significant hazards consideration.

Therefore, facility operation in accordance with the proposed license amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Limiting the MODE 1 applicability for the RPS functional unit, Startup and Operating Rate of Change of Power—High, to Power Range Neutron Flux Power ≤15% of RATED THERMAL POWER, is an administrative change in nature and does not involve the addition of any plant equipment, methodology or analyses. The proposed changes do not alter the design, configuration, or method of operation of the subject RPS functional unit or of any other SSC. More specifically, the proposed changes neither alter the power rate-of-change trip function nor its ability to bypass and reset as required. The subject RPS functional unit remains capable of performing its design function.

The proposed addition of new LCO 3.0.5 to the St. Lucie Unit 1 and Unit 2 TS and related modification to [LCO 3.0.1 and] LCO 3.0.2 is consistent with the guidance provided in NUREG–1432, Volume 1 (Reference 6.1 [of the amendment request]) and thereby has been previously evaluated by the Commission with a determination that the proposed change does not involve a significant hazards consideration.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Limiting the MODE 1 applicability for RPS functional unit, Startup and Operating Rate of Change of Power—High, to Power Range Neutron Flux Power ≤15% of RATED THERMAL POWER is an administrative change in nature. The proposed changes neither involve changes to any safety analyses assumptions, safety limits, or limiting safety system settings nor do they adversely impact plant operating margins or the reliability of equipment credited in safety analyses.

The proposed addition of new LCO 3.0.5 to the St. Lucie Unit 1 and Unit 2 TS and related modification to [LCO 3.0.1 and] LCO 3.0.2 is consistent with the guidance provided in NUREG–1432, Volume 1 (Reference 6.1 [of the amendment request]) and thereby has been previously evaluated by the Commission with a determination that the proposed change does not involve a significant hazards consideration.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William S. Blair, Managing Attorney—Nuclear, Florida Power & Light Company, 700 Universe Boulevard, MS LAW/JB, Juno Beach, FL 33408–0420.

NRC Branch Chief: Undine Shoop.

Florida Power & Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating Unit Nos. 3 and 4, Miami-Dade County, Florida

Date of amendment request: June 29, 2017. A publicly-available version is in ADAMS under Accession No. ML17195A569.

Description of amendment request: The amendments would modify the Technical Specification (TS) requirements for mode change limitations in TS 3.0.4 and TS 4.0.4 based on Technical Specifications Tasks Force (TSTF) Improved Standard Technical Specifications Change Traveler, TSTF–359, Revision 9, ''Increase Flexibility in MODE Restraints'' (ADAMS Accession No. ML031190607).

The NRC issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration determination, using the consolidated line item improvement process (CLIIP). Subsequently, on April 4, 2003, the NRC published a Notice of Availability for TSTF–359, Revision 8, in the **Federal Register** (68 FR 16579). That notice announced the availability of this TS improvement through the CLIIP. The NRC subsequently made two modifications in response to comments, as well as one editorial change, which have been incorporated into TSTF–359, Revision 9. The changes proposed in the licensee's submittal are, therefore, based on TSTF–359, Revision 9.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS Action. Being in a TS Action is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on Actions as allowed by the proposed LCO 3.0.4 are no different than the consequences of an accident while relying on Actions for other reasons, such as equipment inoperability. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS while in a TS Action, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS while in a TS Action. The TS allow operation of the plant without the full complement of equipment through the Actions for not meeting the TS Limiting Conditions for Operation (LCO). The risk associated with this allowance is managed by the imposition of Actions that must be performed within the prescribed completion times. The net effect of being in a TS Action on the margin of safety is not considered

significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS Actions to be entered and the associated required actions and completion times to be used in new circumstances. This use is predicated upon performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing Actions in similar circumstances without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William S. Blair, Managing Attorney—Nuclear, Florida Power & Light Company, 700 Universe Boulevard, MS LAW/JB, Juno Beach, FL 33408–0420.

NRC Branch Chief: Undine Shoop.

National Institute of Standards and Technology (NIST), Docket No. 50–184, Center for Neutron Research Test Reactor, Montgomery County, Maryland

Date of amendment request: March 2, 2017 (two letters), as supplemented by letters dated March 29, 2017, and May 25, 2017. Publicly-available versions are in ADAMS under Accession Nos. ML17068A163, ML17068A164, ML17097A243, and ML17153A172, respectively.

Description of amendment request: The proposed amendment would modify the NIST test reactor's technical specifications (TSs) to remove limitations in the present version of the TSs that prohibit use of a test procedure and to change the organizational chart in the TSs. In addition, the proposed amendment would modify the NIST test reactor's license to allow transfer of instrumentation calibration and testing sources from the NIST's material license to the reactor license.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

No, the proposed amendment would not increase the probability or consequences of an accident previously evaluated. The proposed amendment removes conformance conflicts within the Technical Specifications that would occur when operating the reactor as permitted under TSs 2.2(4). The conflicts are removed from the TSs by adding exception statements. When the reactor is operated under the NRC approved conditions in TSs 2.2(4), steady state thermal hydraulic analysis shows that operation at less than 500 kW [kilowatt] with natural circulation results in a critical heat flux ratio and onset of flow instability ratio greater than 2. Transient analysis of reactivity insertion accidents shows that the fuel cladding temperature remains far below the safety limit. The limit of 10 kw was chosen since that was deemed adequate for any operational situation requiring natural circulation operation, such as testing of an unknown core loading.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No, the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment removes conformance conflicts within the Technical Specifications that would occur when operating the reactor as permitted under TSs 2.2(4). The conflicts are removed from the TSs by adding exception statements. The accident analysis was discussed in the document, NIST Response to NRC Request for Information (TAC No. MD3410), August 19, 2008, ADAMS Accession Number ML082890338. The request from the NRC was: ''. . . Provide justification for 500 kW power operations under natural convection flow by demonstrating that no credible accidents would result in exceeding the safety limit . . . ,'' the following was the response by NIST. ''This analysis shows that there is ample margin between the maximum clad temperature in any credible accident and the safety limit of 450 °C [degrees Centigrade].'' The details of the analysis are presented in the above reference.

The intent with this amendment is to allow, without apparent TSs nonconformance, operation analyzed and evaluated by the NRC. This will allow the use of testing similar to that which was performed in the commissioning of NIST test reactor.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

No, the proposed amendment would not involve a significant reduction in a margin of safety. This amendment will allow testing when commissioning a core configuration that is unknown in the most conservative manner appropriate. It removes apparent TS conflicts that would force the licensee into situations that would be less conservative and with less margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Melissa J. Lieberman, Deputy Chief Counsel for NIST, National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

NRC Branch Chief: Alexander Adams, Jr.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: April 21, 2017, as supplemented by letter dated August 15, 2017. Publicly-available versions are in ADAMS under Accession Nos. ML17111A958, and ML17227A775, respectively.

Description of amendment request: The amendment request proposes to depart from approved AP1000 Design Control Document (DCD) Tier 2 information (text, tables and figures) as incorporated into the Updated Final Safety Analysis Report (UFSAR) as plant-specific DCD information, and also proposes to depart from involved plant-specific Tier 1 information (and associated Combined License (COL) Appendix C information). Specifically, the amendment request proposes changes to COL Appendix C (and plant-specific Tier 1) Table 2.2.4–1 and Figure 2.2.4–1 to add two main feedwater thermal relief valves and two start-up feedwater thermal relief valves. The proposed COL Appendix C (and plant-specific DCD Tier 1) changes require additional changes to corresponding Tier 2 information in UFSAR Chapters 3 and 10. Because this proposed change requires a departure from Tier 1 information in the Westinghouse Electric Company's AP1000 DCD, the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with 10 CFR 52.63(b)(1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The changes to Combined License (COL) Appendix C (and plant-specific Tier 1) Table 2.2.4–1 and Figure 2.2.4–1, and associated Updated Final Safety Analysis Report (USFAR) design information do not adversely impact previously evaluated accidents. The addition of the thermal relief valves to the feedwater lines does not adversely impact the ability to isolate the main and startup feedwater lines following a steam or

feedwater line break or steam generator tube rupture. The new thermal relief valves are normally closed and required to open to prevent potential overpressure conditions when ambient temperatures increase in the area. Thermal relief valves added into the feedwater lines operate mechanically and are not activated upon a new engineered safety features (ESF) signal in response to design basis accidents. Isolation capabilities of the main and startup feedwater lines are not adversely affected as ESF signals are not changed. The proposed change does not reduce the temperature of feedwater and does not increase feedwater flow during any operational mode as main feedwater and startup feedwater isolation and control valves are not changed by this activity. Performance of overpressure relief supports the safety-related functions of the isolation and control valves in the main and startup feedwater lines when isolation is required.

No safety-related structure, system, component (SSC) or function is adversely affected by this change. The change does not involve an interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the plant-specific UFSAR are not affected. The proposed changes do not involve a change to the predicted radiological releases due to postulated accident conditions, thus, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to COL Appendix C (and plant-specific Tier 1) Table 2.2.4–1 and Figure 2.2.4–1, and associated UFSAR design information do not reduce the temperature of feedwater and do not increase feedwater flow during any operational mode such that it would result in a new or different kind of accident from accidents previously evaluated. Conclusions of existing analyses are not changed by this activity as existing feedwater isolation and control valves functions are not changed.

The proposed changes to add thermal relief valves to the main and startup feedwater lines do not adversely affect any safety-related equipment, and do not add any new interfaces to safety-related SSCs that adversely affect safety functions. No system or design function or equipment qualification is adversely affected by these changes as the changes do not modify any SSCs that prevent safety functions from being performed by the existing main feedwater and startup feedwater valves. The changes do not introduce a new failure mode, malfunction or sequence of events that could adversely affect safety or safety-related equipment as feedwater isolation capabilities are not changed. Performance of overpressure relief supports the safety-related functions of the isolation and control valves in the main and startup feedwater lines when isolation is required.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to COL Appendix C (and plant-specific Tier 1) Table 2.2.4–1 and Figure 2.2.4–1, and associated UFSAR design information add thermal relief valves to the main feedwater and startup feedwater lines. These valves are designed to the same codes and standards as the existing piping to which they are connected, including ASME Code Section III, Class C, seismic Category I. The proposed changes do not affect any other safety-related equipment or fission product barriers. The requested changes will not affect any design code, function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested changes. There are not any changes to operation of the main feedwater and startup feedwater isolation and control valves when isolation of the lines is required. Operation of the relief valves supports isolation capabilities for the main and feedwater isolation and control valves.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Inc., Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: July 14, 2017. A publicly-available version is in ADAMS under Accession No. ML17195B047.

Description of amendment request: The requested amendment proposes to depart from Tier 2 information in the Updated Final Safety Analysis Report (UFSAR) (which includes the plant-specific design control document (DCD) Tier 2 information) and involves related changes to plant-specific Tier 1 (and associated Combined License (COL) Appendix C) information, and COL Appendix A Technical Specifications. Specifically, the requested amendment proposes changes to add a second normal residual heat removal system (RNS) suction relief valve in parallel to the current RNS suction relief valve, with the necessary piping changes. Additionally, a change is proposed to Tier 1 Figure 2.2.1–1, for penetration P19, to accurately depict the orientation of the class break of containment isolation valve RNS–PL–V061.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with NRC staff's edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to Combined License (COL) Appendix C (and plant-specific Tier 1) Figures 2.2.1–1 and 2.3.6–1, Tables 2.3.6–1, 2.3.6–2 and 2.3.6–4, COL Appendix A, Technical Specification 3.4.14 and associated Updated Final Safety Analysis Report (UFSAR) design information to identify a new normal residual heat removal system (RNS) relief valve, RNS–PL–V020, do not adversely impact accidents previously evaluated in the safety analysis. Transients that are capable of overpressurizing the reactor coolant system (RCS) are categorized as either mass or heat input transients. The relief valves must be capable of passing flow greater than that required for the limiting low-temperature overpressure protection (LTOP) transients while maintaining RCS pressure less than the lowest pressure represented by the pressure/temperature limit curve, 110% of the design pressure of the RNS, or the acceptable RNS relief valve inlet pressure. The restrictions added to COL Appendix A, Technical Specification 3.4.14 to close chemical and volume control system (CVS) makeup line containment isolation valve, CVS–PL–V091, limit flow capacity when the RCS is aligned to the RNS to support LTOP functions and provide reliable operation of the RNS relief valves during mass and heat input transients. When CVS–PL–V091 is open, the RCS is depressurized and an RCS vent of ≥4.15 square inches is established. Transient conditions including mass input and heat input are not changed and probability of events is not increased as the added RNS relief valve, RNS–PL–V020, supports LTOP functions as required by Technical Specification 3.4.14. The current 3-inch RNS relief valve is sufficient to terminate identified transients; however, the added 1-inch RNS relief valve reduces chatter in the current valve during low flow scenarios.

Responses to mass and heat input transients are not changed as LTOP functions to prevent overpressurization of the RCS are not changed by this activity. The added RNS relief valve, RNS–PL–V020, is designed in accordance with the same requirements as the current RNS relief valve, RNS–PL–V021, but with a lower flow capacity and functions at a lower setpoint pressure. Overpressure protection provided by the RNS is not

changed. The change does not adversely impact the capability of the RNS to protect the RCS from exceeding pressure and temperature limits in accordance with 10 CFR 50, Appendix G or 110% of the design pressure of the RNS. Changes in piping to accommodate the addition of the valve and reduce inlet piping losses do not impact the consequences or probabilities of previously evaluated accidents. The class break correction for valve RNS–PL–V061, in COL Appendix C (and plant-specific Tier 1) Figure 2.2.1–1 does not impact accidents previously evaluated.

No safety-related structure, system, component (SSC) or function is adversely affected by this change. The change does not involve an interface with any structure, system, or component (SSC) accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the plant-specific UFSAR are not affected. The proposed changes do not involve a change to the predicted radiological releases due to postulated accident conditions, thus, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Conclusions of existing analyses are not changed by the proposed change as LTOP functions provided by both the current and added RNS relief valves continue to provide the assumed protection for LTOP events. RCS pressure is maintained within limits by the use of both RNS relief valves. The closure of CVS–PL–V091 limits flow and reduces the impact of mass and heat input transients when RNS relief valves are relied upon for overpressure protection.

The proposed change to add the smaller RNS relief valve, RNS–PL–V020, does not adversely affect safety-related equipment, and does not add any new interfaces to safety-related SSCs that adversely affect safety functions. The added RNS relief valve, functions in the same manner as the current RNS relief valve, but has a lower capacity and lifts at a lower pressure. The added RNS relief valve also discharges to the liquid radwaste system (WLS) containment sump. No system or design function or equipment qualification is adversely affected by these changes as the change does not modify any SSCs that prevent safety functions from being performed by the RNS and the current relief valve. The changes do not introduce a new failure mode, malfunction or sequence of events that could adversely affect safety or safety-related equipment. Piping changes to accommodate the installation of the new valve do not create the potential for a new or different kind of accident as the piping requirements are consistent with those of the current relief valve, and subject to the same pipe rupture evaluation requirements. LTOP functions are not changed. The class break correction for valve RNS–PL–V061 does not impact accident analysis or create a new or different kind of accident as the function of the affected equipment and piping is not changed.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect safety-related equipment or fission product barriers. LTOP functions are not adversely impacted as both the current and added RNS relief valves continue to provide protection from overpressurization. The added RNS relief valve is designed in accordance with [American Society of Mechanical Engineers (ASME)] Code Section III, Class 2, requirements consistent with the current RNS relief valve. Modified piping is constructed consistent with current design requirements for RNS piping. The addition of the valve adds safety margin in regards to transients as the new valve lifts at a lower set pressure than the current valve, causing flow rates to be lower through the RNS piping. Therefore, margin of safety is not reduced. The requested changes will not affect any design code, function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested changes. Transient conditions, including mass input and heat input, are not changed and margin of safety is not reduced as the added RNS relief valve supports LTOP functions in the same manner as the current RNS relief valve.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: May 31, 2017. A publicly-available version is in ADAMS under Accession No. ML17151A296.

Description of amendment request: The requested amendment proposes to depart from approved AP1000 Design Control Document (DCD) Tier 2 information (text, tables, and figures) as incorporated into the Updated Final Safety Analysis Report (UFSAR) as plant-specific DCD information, and from involved plant-specific Technical Specifications as incorporated in Appendix A of the combined license. Specifically, the proposed changes support the addition of chemicals necessary to achieve proper reactor coolant system (RCS) water quality by allowing an unborated water source through the chemical mixing tank to be unisolated for ≤1 hour for chemical addition to the pressurizer to be performed with reactor coolant pumps (RCPs) not in operation. In order to perform chemical addition to the pressurizer without the mixing provided by forced reactor coolant system (RCS) flow, administrative controls are established such that coolant introduced into the RCS is at a boron concentration greater than or equal to that required to meet the shutdown margin (SDM) boron concentration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Updated Final Safety Analysis Report (UFSAR) 15.4.6, Chemical and Volume Control System Malfunction that Results in a Decrease in the Boron Concentration in the Reactor Coolant, addresses inadvertent boron dilution events. The principal means of positive reactivity insertion to the core is the addition of unborated, primary-grade water from the demineralized water transfer and storage system (DWS) into the reactor coolant system (RCS) through the reactor makeup portion of the chemical and volume control system (CVS).

These events are primarily evaluated with one or more reactor coolant pumps (RCPs) in operation providing adequate mixing. The changes proposed by this amendment request do not involve operations where the RCPs are in operation. Therefore, there is no increase in the probability or consequences of inadvertent boron dilution events with RCPs operating.

UFSAR Subsection 15.4.6 also describes that when a reactor coolant pump is not operating, the demineralized water isolation valves are closed and an uncontrolled boron dilution transient cannot occur. The proposed amendment adds provisions to allow a specific CVS unborated water source flow path to be opened through the chemical mixing tank to the RCS pressurizer when RCPs are not in operation for the purpose of chemical addition to the pressurizer. The administrative control provisions proposed provide adequate assurance that any injection to the RCS pressurizer would only occur such that injected water is limited to

boron concentrations greater than the required concentrations to meet the SDM. With no reduction in SDM, there would be no means of positive reactivity insertion to the core leading to an adverse reactivity event. As such, there is no significant increase in the probability of a previously evaluated boron dilution event as a result of this change.

Since the proposed change does not lead to any positive reactivity insertion, there are no increased consequences of an accident previously evaluated.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The administrative control provisions proposed provide adequate assurance that any injection to the pressurizer would only occur such that injected water is limited to boron concentrations greater than the required concentrations to meet the SDM. With no reduction in SDM, there would be no means of positive reactivity insertion to the core leading to an adverse reactivity event. Failure modes involving procedural controls and operator actions are considered in evaluating inadvertent boron dilution events. The possibility of a new or different kind of failure, malfunction, or sequence of events has been evaluated with these proposed changes; events are precluded with the proposed administrative controls and defense in depth features inherent in the AP1000 design.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established by maintaining the required SDM during shutdown activities. The proposed changes to the UFSAR and Technical Specifications do not adversely affect the safety-related functions of the RCS or CVS in maintaining adequate SDM. Provisions are proposed for a specific CVS unborated water source flow path to be opened through the chemical mixing tank to the RCS pressurizer when RCPs are not in operation; however, this activity is performed under administrative controls that preclude the potential for a reduction in SDM.

The changes do not affect containment penetrations or any other safety-related equipment or fission product barriers. The requested changes will not affect any design code, function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested changes. The existing design and operation of the associated systems are adequate to preclude an inadvertent boron dilution from occurring when RCPs are not in operation.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazard consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: July 28, 2017. A publicly-available version is in ADAMS under Accession No. ML17209A185.

Description of amendment request: The requested amendment proposes to depart from approved AP1000 Design Control Document (DCD) Tier 2 information as incorporated into the Updated Final Safety Analysis Report (UFSAR) as plant-specific DCD information, and also proposes to depart from involved plant-specific Tier 1 information and the associated combined license (COL) Appendix C information. Specifically, the amendment, if approved, would revise the COL documents mentioned previously to reflect the proposed changes to update Reactor Coolant System (RCS) requirements for the reactor vessel head vent (RVHV) mass flow rate. Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from elements of the design as certified in the 10 CFR part 52, Appendix D, design certification rule is also requested for the plant-specific DCD Tier 1 material departures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

UFSAR Subsections 15.2.7, 15.5.1, and 15.5.2 describe analyses performed for an increase in reactor coolant inventory due to a loss of normal feedwater flow, and for malfunctions of the chemical and volume control system and the core makeup tanks. In each of these evaluated accidents, it is assumed that the operators are alerted to the event due to a high pressurizer water level and take subsequent action to open the reactor vessel head vent valves. When the head vent is opened, the pressurizer water level increase slows and eventually decreases.

Changing the required mass flow rate from 8.2 lbm/sec at a Reactor Coolant System (RCS) pressure of 1250 psia [pounds per square inch absolute] to 9.0 lbm/sec [pounds mass per second] at an RCS pressure of 2500 psia for the reactor vessel head vent (RVHV) flow path does not change the probability of these events occurring. The valves are used to mitigate the events. They are not an initiator of these accidents, or any other accident previously evaluated. Changing the required mass flow rate does not change the consequences of these accidents. The proposed flow rate change is made to be consistent with the latest AP1000 safety analysis. This change does not lead to an increase in the probability of a loss of coolant accident, nor does it cause the RVHV to exceed the capability of the normal makeup system. The changes described above continue to ensure the design is capable of providing adequate flow rate for emergency letdown and the prevention of long term pressurizer overfill.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes impact the acceptance criteria for RVHV mass flow rate. The required mass flow rate is changed from 8.2 lbm/sec at an RCS pressure of 1250 psia to 9.0 lbm/sec at an RCS pressure of 2500 psia to align with the events evaluated in the current safety analysis. The proposed changes do not result in a new accident initiator and do not impact a current accident initiator.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes impact the acceptance criteria for RVHV mass flow rate. The required mass flow rate is changed from 8.2 lbm/sec at an RCS pressure of 1250 psia to 9.0 lbm/sec at an RCS pressure of 2500 psia. The proposed changes are made to reflect the updated AP1000 plant safety analysis; the changes are conservative and bound the expected performance of the as-built equipment.

COL Appendix C (plant-specific Tier 1) is proposed to be updated to reflect the new mass flow rate through the RVHV line and the associated system pressure. COL Appendix C (plant-specific Tier 1) is updated to reflect the latest safety analysis, which credits an emergency letdown mass flow rate of 9.0 lbm/sec at an RCS pressure of 2500

psia. At these conditions, long term pressurizer overfill is prevented. RCS calculations show that the expected mass flow rate through the emergency letdown path is 12.34 lbm/sec. Therefore, the safety analysis calculation, and the corresponding mass flow rate and RCS pressure values used in the proposed changes, is conservative and bounded by the expected mass flow rate.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue, North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: July 31, 2017. A publicly-available version is in ADAMS under Accession No. ML17212A842.

Description of amendment request: The amendment would revise the staffing and staff augmentation times described in the South Texas Project Emergency Plan. The proposed amendment would increase the Emergency Response Organization (ERO) response times and would modify minimum staffing functions and requirements of the ERO and Operations Support Center staff. The changes also include formatting, clarification, and editorial modifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment has no effect on normal plant operation or on any accident initiator or precursors and does not impact the function of plant structures, systems, or components. The proposed changes do not alter or prevent the ability of the Emergency Response Organization to perform their intended functions to mitigate the consequences of an accident or event.

Therefore, the proposed STPEGS [South Texas Project Electric Generating Station] Emergency Plan change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not impact any accident analysis. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed), a change in the method of plant operation, or new operator actions. The proposed change does not introduce failure modes that could result in a new accident, and the change does not alter assumptions made in the safety analysis. The proposed change revises the on-shift staffing and staff augmentation response times in the STPEGS Emergency Plan. The proposed changes do not alter or prevent the ability of the Emergency Response Organization to perform their intended functions to mitigate the consequences of an accident or event.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed change is associated with the STPEGS Emergency Plan staff and staff augmentation and does not impact operation of the plant or its response to transients or accidents. The change does not affect the Technical Specifications. The proposed change does not involve a change in the method of plant operation and no accident analyses will be affected by the proposed change. Safety analysis acceptance criteria are not affected by the proposed change. The revised STPEGS Emergency Plan will continue to provide the necessary response staff with the proposed change. Therefore, the proposed change is determined to not adversely affect the ability to meet the requirements of 10 CFR 50.54(q)(2), 10 CFR 50 Appendix E, or the emergency planning standards described in 10 CFR 50.47(b).

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kym Harshaw, General Counsel, STP Nuclear Operating Company, P.O. Box 289, Wadsworth, TX 77483.

NRC Branch Chief: Robert J. Pascarelli.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2 (Brunswick), Brunswick County, North Carolina

Duke Energy Progress, LLC, Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1 (Harris), Wake County, North Carolina

Duke Energy Progress, LLC, Docket No. 50–261, H.B. Robinson Steam Electric Plant Unit No. 2 (Robinson), Darlington County, South Carolina

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3 (Oconee), Oconee County, South Carolina

Date of amendment request: April 29, 2016, as supplemented by letters dated October 3, 2016, and January 16, 2017.

Brief description of amendments: The amendments (1) consolidated the Emergency Operations Facilities (EOFs) for Brunswick, Harris, and Robinson with the Duke Energy Progress, LLC (Duke Energy) corporate EOF in Charlotte, North Carolina; (2) decreased the frequency for a multisite drill at Oconee from once per 6 years to once per 8 years; (3) allowed the multisite drill performance with sites other than the Catawba Nuclear Station, McGuire Nuclear Station, or Oconee; (4) changed the Brunswick, Harris, and Robinson augmentation times to be consistent with those of the sites currently supported by the Duke Energy corporate EOF; and (5) decreased the frequency of the unannounced augmentation drill at Brunswick from twice per year to once per year.

Date of issuance: August 21, 2017.

Effective date: As of the date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment Nos.: 279 and 307 for Brunswick, Units 1 and 2; 160 for Harris, Unit 1; 254 for Robinson Unit No. 2; and 405, 407, and 406 for Oconee, Units 1, 2, and 3. A publicly-available version is in ADAMS under Accession No. ML17188A387; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–71 and DPR–62 for Brunswick, Units 1 and 2; NPF–63 for Harris, Unit 1; DPR–23 for Robinson Unit No. 2; and DPR–38, DPR–47, and DPR–55 for Oconee, Units 1, 2, and 3: The amendments revised the emergency plans.

Date of initial notice in ***Federal Register:*** July 5, 2016 (81 FR 43650). The supplemental letters dated October 3, 2016, and January 16, 2017, provided additional information that expanded the scope of the application as originally noticed and changed the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. Accordingly, the NRC published a second proposed no significant hazards consideration determination in the **Federal Register** on February 14, 2017 (82 FR 10594). This notice superseded the original notice in its entirety.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 21, 2017.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: July 28, 2016, as supplemented by letters dated February 23, 2017, and June 21, 2017.

Brief description of amendment: The amendment revised the current emergency action level scheme to one based on Nuclear Energy Institute (NEI) guidance in NEI 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors'' (ADAMS Accession No. ML12326A805). Revision 6 of NEI 99–01 was endorsed by the NRC in a letter dated March 28, 2013.

Date of issuance: August 28, 2017.

Effective date: As of its date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment No.: 244. A publicly-available version is in ADAMS under Accession No. ML17188A230; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–21: The amendment revised the Operating License.

Date of initial notice in ***Federal Register:*** September 27, 2016 (81 FR 66305). The supplemental letters dated February 23, 2017, and June 21, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 2017.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: October 7, 2016, as supplemented by letter dated March 20, 2017.

Brief description of amendments: The amendments revised the Updated Final Safety Analysis Report (UFSAR) to identify the TORMIS Computer Code as the methodology used for assessing tornado-generated missile protection of unprotected plant structures, systems and components (SSCs) and to describe the results of the Byron Station site-specific tornado hazard analysis.

Date of issuance: August 10, 2017.

Effective date: As of the date of issuance and shall be implemented within 60 days of the date of issuance. The UFSAR changes shall be filed with the NRC in the next periodic update to the UFSAR scheduled for December 15, 2018.

Amendment Nos.: 199 for NPF–37 and 199 for NPF–66. A publicly-available version is in ADAMS under Accession No. ML17188A155; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–37, and NPF–66: The amendments revised the current licensing basis as described in the UFSAR.

Date of initial notice in ***Federal Register:*** December 6, 2016 (81 FR 87969). The March 20, 2017, supplement contained clarifying information and did not change the scope of the proposed action or affect the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 2017.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station (Beaver Valley), Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of amendment request: June 30, 2017.

Brief description of amendments: The amendments modified requirements on control and shutdown rods, and rod and bank position indication for Beaver Valley, Unit No. 2. The changes are consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–547, Revision 1, ''Clarification of Rod

Position Requirements.'' Additional supporting changes to Beaver Valley, Unit Nos. 1 and 2, Technical Specifications were also made.

Date of Issuance: August 16, 2017.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 299 (Unit No. 1) and 188 (Unit No. 2). A publicly-available version is in ADAMS under Accession No. ML17221A280; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** July 11, 2017 (82 FR 32017).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 16, 2017.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: September 21, 2015, as supplemented by letters dated November 13, December 15 (two letters), and December 18, 2015; February 16, March 8, March 9, March 24, March 28, April 4, April 5, April 14, April 22 (two letters), April 27, May 11, May 20 (two letters), May 27, June 9, June 17, June 20, June 24, July 13 (two letters), July 27, July 29 (two letters), August 3 (three letters), September 12, September 21, September 23, October 13, October 28, and October 31, 2016; and January 20, February 3, March 3, and June 12, 2017.

Brief description of amendments: The amendments revised Renewed Facility Operating Licenses (RFOLs) and Technical Specifications (TSs) to authorize an increase of maximum reactor core thermal power level for Browns Ferry Nuclear Plant, Units 1, 2, and 3 to 3,952 megawatt thermal (MWt). These license amendments represent an increase of approximately 14.3 percent above the current licensed thermal power level of 3,458 MWt, which is an increase of approximately 20 percent above the original licensed thermal power level of 3,293 MWt. The NRC considers the requested increase in power level to be an extended power uprate.

Date of issuance: August 14, 2017.

Effective date: As of the date of issuance and shall be implemented prior to startup from the refueling outages of fall 2018 (Unit 1), spring 2019 (Unit 2), and spring 2018 (Unit 3).

Amendment Nos.: 299 (Unit 1), 323 (Unit 2), and 283 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML17032A120; documents related to these amendments are listed in the Safety Evaluation (SE) enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the RFOLs and TSs.

Date of initial notice in ***Federal Register:*** July 5, 2016 (81 FR 43666). The supplemental letters dated April 22 (two letters), April 27, May 11, May 20 (two letters), May 27, June 9, June 17, June 20, June 24, July 13, (two letters); July 27, July 29 (two letters), August 3 (three letters), September 12, September 21, September 23, October 13, October 28, and October 31, 2016; and January 20, February 3, March 3, and June 12, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in the SE dated August 14, 2017.

No significant hazards consideration comments received: Yes, refer to Section 6.0, ''Public Comments,'' of the SE.

Wolf Creek Nuclear Operating Corporation (WCNOC), Docket No. 50–482, Wolf Creek Generating Station (WCGS), Coffey County, Kansas

Date of amendment request: September 30, 2016, as supplemented by letters dated March 16 and April 26, 2017.

Brief description of amendment: The amendment revised the emergency action level (EAL) scheme used at WCGS. The currently approved EAL scheme is based on Nuclear Management and Resources Council/ National Environmental Studies Project (NUMARC/NESP)-007, Revision 2, ''Methodology for Development of Emergency Action Levels,'' January 1992. The amendment allows WCNOC to adopt an EAL scheme, which is based on the guidance established in Nuclear Energy Institute (NEI) 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' November 2012. Revision 6 of NEI 99–01 has been endorsed by the NRC by letter dated March 28, 2013.

Date of issuance: August 28, 2017.

Effective date: As of its date of issuance and shall be implemented by September 30, 2018.

Amendment No.: 218. A publicly-available version is in ADAMS under Accession No. ML17166A409; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–42. The amendment revised the Operating License.

Date of initial notice in ***Federal Register:*** December 6, 2016 (81 FR 87974). The supplemental letters dated March 16 and April 26, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 2017.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 30th day of August 2017.

For the Nuclear Regulatory Commission.

Eric J. Benner,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–19214 Filed 9–11–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282, 50–306, 50–368, 50–334, 50–338, 50–339, 50–280, 50–445, 50–395, 50–348, 50–364, 50–498, 50–499, 50–327, 50–390, 50–336, 50–335; NRC–2017–0188]

Northern States Power Company—Minnesota; Entergy Operations, Inc.; FirstEnergy Nuclear Operating Company; Virginia Electric and Power Company; TEX Operations Company, LLC; South Carolina Electric & Gas Company, Inc.; STP Nuclear Operating Company; Tennessee Valley Authority

AGENCY: Nuclear Regulatory Commission.

ACTION: 10 CFR 2.206 request; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is giving notice that by petition dated January 24, 2017, Mr. Paul Gunter on behalf of Beyond Nuclear, and representing numerous public interest groups (collectively, Beyond Nuclear, *et al.,* or petitioners), has requested that the NRC take action

with regard to licensees of plants that currently rely on potentially defective safety-related components and potentially falsified quality assurance documentation supplied by AREVA-Le Creusot Forge and its subcontractor, Japan Casting and Forging Corporation. The petitioners' requests are included in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID NRC–2017–0188 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0188. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Merrilee Banic, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2771; email: *Merrilee.Banic@nrc.gov.*

SUPPLEMENTARY INFORMATION: On January 24, 2017, (ADAMS Accession No. ML17025A180) the petitioners requested that the NRC take action with regard to licensees of plants that currently rely on potentially defective safety-related components and potentially falsified quality assurance documentation supplied by AREVA-Le Creusot Forge and its subcontractor, Japan Casting and Forging Corporation.

As a basis for this request, the petitioners provided the expert review of John Large & Associates identifying significant ''irregularities'' and ''anomalies'' in both the manufacturing process and quality assurance documentation of large reactor components manufactured by the AREVA-Le Creusot Forge for French reactors and reactors in other countries.

The request is being treated pursuant to section 2.206 of title 10 of the *Code of Federal Regulations* (10 CFR) of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. The petitioners supplemented the petition on February 16, March 6, June 16, June 22, June 27, June 30, and July 5, 2017 (ADAMS Accession Nos. ML17052A032, ML17068A061, ML17067A562, ML17174A087, ML17174A788, ML17179A288, ML17184A058, and ML17187A026, respectively). The supplements are being considered in evaluating the petitioners' request for enforcement action.

The petitioners addressed the Petition Review Board in a public meeting on March 8, 2017; the transcript of that meeting (ADAMS Accession No. ML17081A418) is an additional supplement to the petition. The results of that meeting were considered in the Board's determination regarding the petitioners' request for enforcement action. The Director determined that the petitioners' request for enforcement action concerning potentially defective safety-related components met the criteria for review under the 10 CFR 2.206 process, but that the request about potentially falsified quality assurance documentation would be referred to another NRC process for appropriate action. Because the allegation process provides an opportunity for the petitioners to address these concerns, the issue of potentially falsified quality assurance documentation will not be reviewed as part of this 2.206 petition. The NRC will take appropriate action on this petition within a reasonable time.

Dated at Rockville, Maryland, this 30th day of August 2017.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–19216 Filed 9–11–17; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2017–184 and CP2017–285; MC2017–185 and CP2017–286; MC2017–186 and CP2017–287; MC2017–187 and CP2017–288; MC2017–188 and CP2017–289; MC2017–189 and CP2017–290; MC2017–190 and CP2017–291; MC2017–191 and CP2017–292; MC2017–192 and CP2017–293; MC2017–193 and CP2017–294]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 18, 2017 and September 19, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: The September 18, 2017 comment due date applies to Docket Nos. MC2017–184 and CP2017–285; MC2017–185 and CP2017–286; MC2017–186 and CP2017–287; MC2017–187 and CP2017–288; MC2017–188 and CP2017–289.

The September 19, 2017 comment due date applies to Docket Nos. MC2017–189 and CP2017–290; MC2017–190 and CP2017–291; MC2017–191 and CP2017–292; MC2017–192 and CP2017–293; MC2017–193 and CP2017–294.

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal

Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2017–184 and CP2017–285; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 348 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 6, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* September 18, 2017.

2. *Docket No(s).:* MC2017–185 and CP2017–286; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 349 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 6, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* September 18, 2017.

3. *Docket No(s).:* MC2017–186 and CP2017–287; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 350 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 6, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* September 18, 2017.

4. *Docket No(s).:* MC2017–187 and CP2017–288; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 351 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 6, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* September 18, 2017.

5. *Docket No(s).:* MC2017–188 and CP2017–289; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 352 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 6, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Timothy J. Schwuchow; *Comments Due:* September 18, 2017.

6. *Docket No(s).:* MC2017–189 and CP2017–290; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 353 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 6, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Timothy J. Schwuchow; *Comments Due:* September 19, 2017.

7. *Docket No(s).:* MC2017–190 and CP2017–291; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Express Contract 50 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 6, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Michael L. Leibert; *Comments Due:* September 19, 2017.

8. *Docket No(s).:* MC2017–191 and CP2017–292; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 50 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 6, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Michael L. Leibert; *Comments Due:* September 19, 2017.

9. *Docket No(s).:* MC2017–192 and CP2017–293; *Filing Title:* Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 54 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 6, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* September 19, 2017.

10. *Docket No(s).:* MC2017–193 and CP2017–294; *Filing Title:* Request of the United States Postal Service to Add First-Class Package Service Contract 79 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* September 6, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* September 19, 2017.

This notice will be published in the **Federal Register.**

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–19323 Filed 9–11–17; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

International Product Change—GEPS 8 Contracts

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add Global Expedited Package Services 8 product to the Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Donald W. Ross, (973) 477–4406.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642, on September 5, 2017, it filed with the Postal Regulatory Commission a Request of The United States Postal Service to add Global Expedited Package Services 8 to the Competitive Products List. Documents are available

at *www.prc.gov,* Docket Nos. MC2017–183 and CP2017–284.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2017–19237 Filed 9–11–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 6, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 353 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–189, CP2017–290.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–19274 Filed 9–11–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 6, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 350 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–186, CP2017–287.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–19271 Filed 9–11–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 6, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 79 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–193, CP2017–294.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–19278 Filed 9–11–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 6, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 50 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–191, CP2017–292.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–19276 Filed 9–11–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 6, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 351 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–187, CP2017–288.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–19272 Filed 9–11–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 6, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 349 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–185, CP2017–286.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–19270 Filed 9–11–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 6, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express Contract 50 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–190, CP2017–291.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–19275 Filed 9–11–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 6, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 54 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–192, CP2017–293.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–19277 Filed 9–11–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 6, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 352 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–188, CP2017–289.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–19273 Filed 9–11–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 6, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 348 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–184, CP2017–285.

Elizabeth A. Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2017–19269 Filed 9–11–17; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81539; File No. SR–NYSEArca–2017–93]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Commentary .06 to NYSE Arca Rule 6.91–O To Enhance the Price Protections for Complex Orders Executed on the Exchange

September 6, 2017.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 2017, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 adopt Commentary .06 to Rule 6.91–O (Electronic Complex Order Trading) to enhance the price protections for Complex Orders executed on the Exchange. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Commentary .06 to Rule 6.91–O to enhance the price protections applicable to Electronic Complex Orders (or ''ECOs'').[3]

The Exchange currently provides price protection to ECOs, which is designed to prevent the execution of orders at prices that are priced a certain percentage away from the current market and, therefore, are potentially erroneous.[4] The Exchange proposes an additional price protection that would be another check on whether an ECO's limit price is correctly aligned to the complex strategy and would reject erroneously priced incoming ECOs (the ''Reasonability Checks'').[5] As discussed herein, the proposed price protections are materially identical to price protections available on other options exchanges, including Nasdaq ISE, LLC (''ISE'').[6]

First, the Exchange proposes Commentary .06(a)(1) to Rule 6.91–O, pursuant to which, upon entry into the System, the Exchange would reject any incoming order for a complex strategy where all legs are to sell (buy) if it is entered at a price that is less (more) than the minimum (maximum) price, which is calculated as the sum of the ratio on each leg of the Complex Order multiplied by $0.01 (−$0.01) per leg (*e.g.,* an order to sell (buy) 2 calls and sell (buy) 1 put would have a minimum (maximum) price of $0.03 (−$0.03)).[7]

For example, an order to sell 2 calls and sell 1 put would have a minimum net credit price of $0.03. If such an order were entered at a price of $0.02, it would not be executable, as a price of zero would have to be assigned to one of the legs of the order. As proposed, this order would be rejected.

As another example, if a market participant is entering the following ''all sell'' complex strategy for a debit:

- *Leg A:* $100 \times 0.01 - 0.02 \times 100$
- *Leg B:* $100 \times 0.01 - 0.02 \times 100$
- *Order 1:* Sell1 Leg A, Sell 2 Leg B; Net price: − $0.03

Result: As proposed, Order 1 would be rejected because it is priced less than the minimum order price of $0.03. Based on each individual leg trading for at least $0.01, this complex strategy would never trade at a net credit price of less than $0.03. Thus, any sell order for this strategy with a limit price less than $0.03 would be rejected.

If, for example, a market participant is entering the following ''all buy'' complex strategy:

- *Leg A:* $100 \times 0.01 - 0.02 \times 100$
- *Leg B:* $100 \times 0.01 - 0.02 \times 100$
- *Order 1:* Buy Leg A, Buy 2 Leg B; Net price: − $0.02

Result: As proposed, Order 1 would be rejected because it is priced greater than the maximum net debit price of −$0.03 (and only orders priced at −$0.03 or less would be accepted). Because debit orders are entered into the Exchange System as a negative value, the ''maximum'' price check for buy orders is effectively a check for the minimum order price. Here, Order 1 @ −$0.02 would represent an order to buy for a net debit price of $0.02, and therefore would be rejected.

The Exchange notes that the price check in proposed Commentary .06(a)(1) to Rule 6.91–O is materially identical to price protections available on at least one other options exchange, ISE.[8]

Second, the Exchange proposes Commentary .06(a)(2) to Rule 6.91–O, pursuant to which, upon entry into the System, the Exchange would reject any incoming order for a vertical spread strategy (*i.e.,* an order to sell a call (put) option and to buy another call (put) option in the same security with the same expiration but at a higher (lower) strike price) when entered with a net debit price of −$0.01 or less.[9]

For example, if a market participant is entering the following vertical call credit spread for a debit:

- *Leg A:* April SPY 240 Call: $100 \times 1.72 - 1.73 \times 100$
- *Leg B:* April SPY 241 Call: $100 \times 1.36 - 1.37 \times 100$
- *Order 1:* Sell 1 Leg A, Buy 1 Leg B; Quantity 50; Net price: $ − 0.35

Result: As proposed, Order 1 would be rejected because it priced less than or equal to −$0.01 (*i.e.,* it has a negative limit price). The Exchange notes that the lower strike call will always be more

[3] Rule 6.62–O(e) defines a Complex Order as any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, 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 purpose of executing particular investment strategy. Per Rule 6.91–O, an ECO is a Complex Order that has been entered into the NYSE Arca System (''System'') for possible execution. *See* Rule 6.91–O(a).

[4] *See* Commentary .05 to Rule 6.91–O (providing for the rejection of ECOs that are priced away from the current market by a ''Specified Amount,'' which Specified Amount varies depending on the smallest MPV of any leg in the ECO) (the ''Price Protection Filter'' or ''Filter'') .

[5] *See* proposed Commentary .06 to Rule 6.91–O, which would provide that the Exchange would reject any incoming ECO that has a strategy described in paragraphs (a)(1)–(3) of proposed Commentary .06 to Rule 6.91–O. Because Reasonability Checks would be performed before the Price Protection Filter, the proposed rule text would provide that ''[a]ny incoming Electronic Complex Order that passes this Reasonability Check would still be subject to the Price Protection Filter, per Commentary .05(b) of this Rule.'' *See id.*

[6] *See e.g.,* ISE Rule 722, Supplementary Material .07(Price limits for complex orders and quotes). The Exchange notes that, as discussed herein, the proposed Reasonability Checks are similar to those initially adopted by ISE and do not include a later adopted pre-set value ''buffer.'' *See infra* nn. 12 and 15 [sic]. Moreover, because the Exchange does not support ECOs entered as market orders, the Exchange has not adopted price checks related to such orders (which orders ISE supports). *See e.g.,* ISE Rule 722, Supplementary Material .07(c)(1), (3). The Exchange also notes that the Chicago Board Options Exchange, Inc. (''CBOE'') likewise includes complex strategy price checks, which cover more strategies than proposed herein, but are nonetheless designed to accomplish the same goal of avoiding execution of erroneously priced complex orders. *See* CBOE Rule 6.53C, Interpretations and Policies .08 (Price Check Parameters).

[7] *See* proposed Commentary .06(a)(1) to Rule 6.91–O.

[8] *See* Securities Exchange Act Release No. 71406 (January 27, 2014), 79 FR 5495, 5496 (January 31, 2014) (SR–ISE–2014–05) (''ISE Price Reasonability Filing'') (adopting ''minimum net price'' protection feature, providing that the ISE system would ''reject any complex order strategy where all legs are to buy if it is entered at a price that is less than the minimum price, which is calculated as the sum of the ratio on each leg of the complex order multiplied by $0.01 per leg (*e.g.,* an order to buy 2 calls and buy 1 put would have a minimum price of $0.03)'').

[9] *See* proposed Commentary .06(a)(2) to Rule 6.91–O.

expensive than the higher strike call within the same expiration.[10] Thus, entering this sell order with a negative limit price would result in it being rejected.

The Exchange notes that the price check in proposed Commentary .06(a)(2) to Rule 6.91–O is materially identical to price protections available on at least one other options exchange, ISE.[11]

Finally, upon entry into the System, the Exchange proposes to reject any incoming order for a credit calendar spread strategy (*i.e.,* an order to sell a call (put) option with a longer expiration and to buy another call (put) option with a shorter expiration in the same security at the same strike price) when entered with a net price of −$0.01 or less.[12]

For example, if a market participant is entering the following calendar credit spread for a debit:

- *Leg A:* May SPY 240 Call: 100×3.41
- *Leg B:* April SPY 240 Call: 100×1.72
- *Order 1:* Sell 1 Leg A, Buy 1 Leg B; Quantity: 50; Net price: −$1.68

-3.43×100

-1.73×100

Result: As proposed, Order 1 would be rejected because it is priced less than or equal to −$0.01. The Exchange notes that the further out expiring call being sold will always be more expensive than a nearer expiring call being bought at the same strike price, and should always generate a credit.[13] Thus, any order to sell the far expiration and buy the near expiration entered with a price of −0.01 or less would result in this order being rejected.

The Exchange notes that the price check in proposed Commentary .06(a)(3) to Rule 6.91–O is materially identical to price protections available on at least one other options exchange, ISE.[14]

Regarding calendar spread orders, the Exchange also proposes to retain discretion to deactivate this price check in the interest of fair and orderly markets.[15] For example, the Exchange may deactivate this price check if there is a corporate action in a complex symbol that would result in an otherwise valid strategy being rejected by the proposed check.[16] The Exchange believes this discretion to deactivate the Reasonability Check would be consistent with its obligation to assure a fair and orderly market, and that the need for such flexibility is recognized in other Exchange rules, such as those related to position limits, quote-width differentials and price protection filters.[17] As proposed, the Exchange would announce by electronic message to ATP Holders that request to receive such messages if the Exchange deactivates (and later reactivates) the Reasonability Check for calendar spread orders.

Further, the Exchange does not propose to apply the Reasonability Check on calendar orders entered on the Trading Floor, as such orders are subject to manual handling by individuals who will have evaluated the price of an order based on then-market conditions.[18] The Exchange notes that other exchanges that offer price protections similar to those proposed for calendar spreads have similarly retained discretion to limit the application of this check.[19]

The Exchange notes that ECOs that are not rejected by the Reasonability Checks would still be subject to the Price Protection Filter.[20]

Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change within 90 days of the effective date of this rule filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes the proposed Reasonability Checks would protect investors and the public interest and maintain fair and orderly markets by mitigating potential risks associated with market participants entering Complex Orders at clearly unintended prices that are inconsistent with their strategies. Specifically, a Complex Order strategy where all legs are to sell (buy) will be rejected if it is entered at a price that is less (more) than the minimum (maximum) price. The Exchange believes it is reasonable to reject such orders upon entry as they are not executable. Allowing such orders to be entered would create investor confusion; as such orders would not receive an execution and would remain pending until canceled. Similarly, the

[10] The principle behind this check is based on the standard trading principle of ''buy low, sell high.'' The ability to buy stock at a lower price is more valuable than the ability to buy stock at a higher price, and thus a call with a lower strike price has more value, and thus is more expensive, than a call with a higher strike price. Similarly, the ability to sell stock at a higher price is more valuable than the ability to sell stock at a lower price, and thus a put with a higher strike price has more value, and thus is more expensive, than a put with a lower strike price.

[11] *See supra* note 9 [sic], ISE Price Reasonability Filing (providing that, subject to certain limitations, the ISE system would ''reject a vertical spread order (*i.e.,* an order to buy a call (put) option and to sell another call (put) option in the same security with the same expiration but at a higher (lower) strike price) when entered with a net price of less than zero''). The Exchange notes that ISE amended Supplementary Material .07(c)(1) to ISE Rule 722 to add a ''pre-set value'' less than zero to allow a buffer within which certain orders would not be rejected. *See, e.g., See* Securities Exchange Act Release No. 72254 (May 27, 2014), 79 FR 31372, 31373 (June 2, 2014) (SR–ISE–2014–26) (''ISE Price Reasonability Modification Filing''). The Exchange has opted to hard code the reject value as $−0.01, which aligns with the ISE Price Reasonability Filing and, would nonetheless operate in a manner similar to ISE's current rule, notwithstanding the ''buffer.''

[12] *See* proposed Commentary .06(a)(3) to Rule 6.91–O.

[13] The principle behind this check is based on the general concept that locking in a price further into the future involves more risk for the buyer and seller and thus is more valuable, making an option (call or put) with a farther expiration more expensive than an option with a nearer expiration. This is similar, for example, to interest rates for mortgages: In general, an interest rate on a 30-year mortgage is higher than the interest rate on a 15-year mortgage due to the risk of potential interest rate changes over the longer period of time to both the mortgagor and mortgagee.

[14] *See, e.g.,* ISE Rule 722, Supplementary Material .07(c)(3) (providing, in part, that the ISE system will ''reject a calendar spread order (*i.e.,* an order to buy a call (put) option with a longer expiration and to sell another call (put) option with a shorter expiration in the same security at the same strike price) when entered with a net price of less than zero (minus a pre-set value).'' *See also supra* note 12 [sic], ISE Price Reasonability Modification Filing (adopting ISE Rule 722, Supplementary Material .07(c)(2)). Rather than utilize a ''pre-set value'' (or buffer), the Exchange has opted to hard code the reject value as $−0.01. *See id.*

[15] *See* proposed Commentary .06(a)(3)(i) to Rule 6.91–O.

[16] The Exchange has not similarly retained discretion to deactivate the Reasonability Checks for minimum price and vertical spreads because corporate actions will not create a scenario where a lower strike call would be cheaper than a higher strike call, or a higher strike put will be cheaper than a lower strike put.

[17] *See, e.g.,* Rules 6.8–O (regarding position limits); 6.37A–O (regarding maximum quotation spreads); 6.60–O (regarding price protection for orders); 6.61–O (regarding price protection for Market Maker quotes) and Commentary .05 to Rule 6.91–O (regarding the Price Protection Filter for ECOs).

[18] *See* proposed Commentary .06(a)(3)(i) to Rule 6.91–O.

[19] *See, e.g.,* CBOE Rule 6.53C, Interpretations and Policies .08(c)(6) (excluding from debit/credit reasonability checks ''orders routed from a PAR workstation or order management terminal'' because such orders would be subject to manual handling). The Exchange notes that CBOE's exclusion of complex orders entered on the floor from its debit/credit reasonability checks is not limited to calendar spreads but applies to all such orders entered from the floor of the CBOE.

[20] *See* proposed Commentary .06(b) to Rule 6.91–O; *see also supra* note 6 [sic].

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

Exchange believes that rejecting orders for vertical spread strategies—as well as calendar spread strategies—that are entered at a negative price also protects investors from executing orders that were likely entered in error.

Regarding orders for calendar spreads, the Exchange recognizes that it may not be appropriate to apply the Reasonability Checks to calendar spreads in unusual market conditions, such as corporate actions that result in changes in price to the underlying security.[23] The Exchange therefore believes it would remove impediments and perfect the mechanism of a free and open market and a national market system for the Exchange to temporarily deactivate the checks in the event of unusual market conditions, which flexibility is consistent with other exchange rules.[24] Further, the Exchange also recognizes that the applicable protections are not appropriate for orders entered manually on the Trading Floor, because such orders would be subject to an additional check of then-market conditions by the individual entering the order, which flexibility is consistent with the rules of other exchanges.[25]

The Exchange's proposed Reasonability Checks are similar to similar protections offered on other options exchanges, including ISE. To the extent there are differences between the proposed Reasonability Checks, as described above (*see supra* notes12 and 15) [sic], the Exchange does not believe such differences raise any new or significant policy concerns. Further, despite the differences, the proposed Reasonability Checks would otherwise operate in a similar manner to the checks on ISE. As such, the Exchange merely desires to adopt functionality that is similar to what already exists on ISE.[26] Permitting the Exchange to operate on an even playing field relative to other exchanges that have similar functionality removes impediments to and perfects the mechanism for a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed Reasonability Checks specify circumstances in which the Exchange would reject certain ECOs in the interest of protecting investors against the execution of erroneous orders or the execution of orders at erroneous prices. As such, the proposal does not impose any burden on competition. To the contrary, the Exchange believes that the proposed Reasonability Checks may foster more competition. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. The Exchange's proposed rule change would enhance its ability to compete with other exchanges that already offer similar reasonability checks. Thus, the Exchange believes that this type of competition amongst exchanges is beneficial to the market place as a whole as it can result in enhanced processes, functionality, and technologies. The Exchange further believes that because the proposed rule change would be applicable to all OTP Holders and OTP Firms, it would not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[27] and Rule 19b–4(f)(6) thereunder.[28]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[29] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[30] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca has asked the Commission to waive the 30-day operative delay. NYSE Arcs believes that waiving the operative delay would protect investors by enabling the Exchange to provide greater protections from potentially erroneous executions and potentially reduce the attendant risks of such executions. As noted above, the proposal provides that a Complex Order strategy where all legs are to sell (buy) will be rejected if it is entered at a price that is less (more) than the minimum (maximum) price. NYSE Arca notes that such an order is not executable, and that allowing such an order to be entered would create investor confusion because the order would not receive an execution and would remain pending until canceled. Similarly, the Exchange believes that rejecting orders for vertical and calendar spread strategies that are entered at a negative price will protect investors from executing orders that were likely entered in error.[31] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rules are designed to reduce investor confusion and to prevent the entry and execution of erroneously priced ECOs. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[32]

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

[23] *See supra* note 17 [sic].

[24] *See supra* note 18 [sic].

[25] *See supra* note 20 [sic].

[26] *See supra* note 7 [sic].

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[29] 17 CFR 240.19b–4(f)(6).

[30] 17 CFR 240.19b–4(f)(6)(iii).

[31] As discussed above, the proposal also allows the Exchange to deactivate the Reasonability Check for calendar spread strategies. The Exchange will notify OTP Holders and OTP Firms by electronic message of any such deactivation or re-activation. The Exchange believes that this discretion is necessary because a corporate action, for example, could result in the Reasonability Check for calendar spread strategies rejecting an otherwise valid strategy. The proposal also provides that the Reasonability Check for calendar spread strategies will not apply to ECOs that are entered on the Trading Floor. The Exchange notes that such orders are subject to manual handling by individuals who will have evaluated the price of the order based on market conditions. The Exchange further notes that another exchange has adopted a similar rule. *See* note 19, *supra.*

[32] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–93 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2017–93. 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–2017–93 and should be submitted on or before October 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–19241 Filed 9–11–17; 8:45 am]

BILLING CODE 8011–01–P

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies will hold a public meeting on Wednesday, September 13, 2017, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street, NE., Washington, DC.

The meeting will begin at 9:30 a.m. (EDT) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at *www.sec.gov.*

On August 14, 2017, the Commission published notice of the Committee meeting (Release No. 33–10399), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting. No earlier notice of this Meeting was practicable.

The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: September 8, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–19445 Filed 9–8–17; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81538; File No. SR–NYSEArca–2016–176]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change Relating to the Listing and Trading of Shares of the EtherIndex Ether Trust Under NYSE Arca Equities Rule 8.201

September 6, 2017.

On December 30, 2016, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the EtherIndex Ether Trust. The proposed rule change was published for comment in the **Federal Register** on January 23, 2017.[3]

On February 23, 2017, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On April 21, 2017, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] On July 17, 2017, the Commission designated a longer period for Commission action on the proposed rule change.[7] The Commission received nine comment letters regarding the proposed rule change.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79792 (Jan. 13, 2017), 82 FR 7891 (Jan. 23, 2017).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 80094 (Feb. 23, 2017), 82 FR 12268 (Mar. 1, 2017). The Commission designated April 23, 2017, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] *See* Securities Exchange Act Release No. 80501 (Apr. 21, 2017), 82 FR 19397 (Apr. 27, 2017).

[7] *See* Securities Exchange Act Release No. 81155 (July 17, 2017), 82 FR 33938 (July 21, 2017). The Commission designated September 20, 2017, as the date by which the Commission shall either approve or disapprove the proposed rule change.

[8] *See* Letters from Andrew Quentson (Apr. 26, 2017); Charles K. Massey, III, Venture Private Equity Investment (Apr. 26, 2017); Anita Desai (Apr. 29, 2017); Luc Jean (May 3, 2017); Tisho P. (May 10, 2017); Kevin McSheehan (May 14, 2017); Bruce Granger (May 16, 2017); Bruce Granger (May 16, 2017); Alen Lee (May 18, 2017). All comments on the proposed rule change are available on the Commission's Web site at: *https://www.sec.gov/*

Continued

On September 1, 2017, NYSE Arca withdrew the proposed rule change (SR–NYSEArca–2016–176).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–19240 Filed 9–11–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81537; File No. SR–NYSEAMER–2017–07]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Commentary .06 to Rule 980NY To Enhance the Price Protections for Complex Orders Executed on the Exchange

September 6, 2017.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 2017, NYSE American LLC (the ''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Commentary .06 to Rule 980NY (Electronic Complex Order Trading) to enhance the price protections for Complex Orders executed on the Exchange. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Commentary .06 to Rule 980NY to enhance the price protections applicable to Electronic Complex Orders (or ''ECOs'').[3]

The Exchange currently provides price protection to ECOs, which is designed to prevent the execution of orders at prices that are priced a certain percentage away from the current market and, therefore, are potentially erroneous.[4] The Exchange proposes an additional price protection that would be another check on whether an ECO's limit price is correctly aligned to the complex strategy and would reject erroneously priced incoming ECOs (the ''Reasonability Checks'').[5] As discussed herein, the proposed price protections are materially identical to price protections available on other options exchanges, including Nasdaq ISE, LLC (''ISE'').[6]

First, the Exchange proposes Commentary .06(a)(1) to Rule 980NY, pursuant to which, upon entry into the System, the Exchange would reject any incoming order for a complex strategy where all legs are to sell (buy) if it is entered at a price that is less (more) than the minimum (maximum) price, which is calculated as the sum of the ratio on each leg of the Complex Order multiplied by $0.01 (−$0.01) per leg (*e.g.,* an order to sell (buy) 2 calls and sell (buy) 1 put would have a minimum (maximum) price of $0.03 (−$0.03)).[7]

For example, an order to sell 2 calls and sell 1 put would have a minimum net credit price of $0.03. If such an order were entered at a price of $0.02, it would not be executable, as a price of zero would have to be assigned to one of the legs of the order. As proposed, this order would be rejected.

As another example, if a market participant is entering the following ''all sell'' complex strategy for a debit:

- Leg A: $100 \times 0.01 - 0.02 \times 100$
- Leg B: $100 \times 0.01 - 0.02 \times 100$
- Order 1: Sell 1 Leg A, Sell 2 Leg B; Net price: −$0.03

Result: As proposed, Order 1 would be rejected because it is priced less than the minimum order price of $0.03. Based on each individual leg trading for at least $0.01, this complex strategy would never trade at a net credit price of less than $0.03. Thus, any sell order for this strategy with a limit price less than $0.03 would be rejected.

If, for example, a market participant is entering the following ''all buy'' complex strategy:

- Leg A: $100 \times 0.01 - 0.02 \times 100$
- Leg B: $100 \times 0.01 - 0.02 \times 100$
- Order 1: Buy Leg A, Buy 2 Leg B; Net price: −$0.02

Result: As proposed, Order 1 would be rejected because it is priced greater than the maximum net debit price of −$0.03 (and only orders priced at −$0.03 or less would be accepted). Because debit orders are entered into the Exchange System as a negative value, the ''maximum'' price check for buy orders is effectively a check for the minimum order price. Here, Order 1 @ −$0.02 would represent an order to buy

comments/sr-nysearca-2016-176/nysearca2016176.htm.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 900.3NY(e) defines a Complex Order as any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, 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 purpose of executing particular investment strategy. Per Rule 980NY, an ECO is a Complex Order that has been entered into the NYSE System for possible execution. *See* Rule 980NY(a).

[4] *See* Commentary .05 to Rule 980NY (providing for the rejection of ECOs that are priced away from the current market by a ''Specified Amount,'' which Specified Amount varies depending on the smallest MPV of any leg in the ECO) (the ''Price Protection Filter'' or ''Filter'') .

[5] *See* proposed Commentary .06 to Rule 980NY which would provide that the Exchange would reject any incoming ECO that has a strategy described in paragraphs (a)(1)–(3) of proposed Commentary .06 to Rule 980NY. Because Reasonability Checks would be performed before the Price Protection Filter, the proposed rule text would provide that ''[a]ny incoming Electronic Complex Order that passes this Reasonability Check would still be subject to the Price Protection Filter, per Commentary .05(b) of this Rule.'' *See id.*

[6] *See e.g.,* ISE Rule 722, Supplementary Material .07 (Price limits for complex orders and quotes). The Exchange notes that, as discussed herein, the proposed Reasonability Checks are similar to those initially adopted by ISE and do not include a later adopted pre-set value ''buffer.'' *See infra* nn. 12 [sic] and 15 [sic]. Moreover, because the Exchange does not support ECOs entered as market orders, the Exchange has not adopted price checks related to such orders (which orders ISE supports). *See e.g.,* ISE Rule 722, Supplementary Material .07(c)(1),(3). The Exchange also notes that the Chicago Board Options Exchange, Inc. (''CBOE'') likewise includes complex strategy price checks, which cover more strategies than proposed herein, but are nonetheless designed to accomplish the same goal of avoiding execution of erroneously priced complex orders. *See* CBOE Rule 6.53C, Interpretations and Policies .08 (Price Check Parameters).

[7] *See* proposed Commentary .06(a)(1) to Rule 980NY.

for a net debit price of $0.02, and therefore would be rejected.

The Exchange notes that the price check in proposed Commentary .06(a)(1) to Rule 980NY is materially identical to price protections available on at least one other options exchange, ISE.[8]

Second, the Exchange proposes Commentary .06(a)(2) to Rule 980NY, pursuant to which, upon entry into the System, the Exchange would reject any incoming order for a vertical spread strategy (*i.e.,* an order to sell a call (put) option and to buy another call (put) option in the same security with the same expiration but at a higher (lower) strike price) when entered with a net debit price of −$0.01 or less.[9]

For example, if a market participant is entering the following vertical call credit spread for a debit:

- *Leg A:* April SPY 240 Call: 100 × 1.72 − 1.73 × 100
- *Leg B:* April SPY 241 Call: 100 × 1.36 − 1.37 × 100
- *Order 1:* Sell 1 Leg A, Buy 1 Leg B; Quantity 50; Net price: −$0.35

Result: As proposed, Order 1 would be rejected because it priced less than or equal to −$0.01 (*i.e.,* it has a negative limit price). The Exchange notes that the lower strike call will always be more expensive than the higher strike call within the same expiration.[10] Thus, entering this sell order with a negative limit price would result in it being rejected.

The Exchange notes that the price check in proposed Commentary .06(a)(2) to Rule 980NY is materially identical to price protections available on at least one other options exchange, ISE.[11]

Finally, upon entry into the System, the Exchange proposes to reject any incoming order for a credit calendar spread strategy (*i.e.,* an order to sell a call (put) option with a longer expiration and to buy another call (put) option with a shorter expiration in the same security at the same strike price) when entered with a net price of −$0.01 or less.[12]

For example, if a market participant is entering the following calendar credit spread for a debit:

- *Leg A:* May SPY 240 Call: 100 × 3.41 − 3.43 × 100
- *Leg B:* April SPY 240 Call: 100 × 1.72 − 1.73 × 100
- *Order 1:* Sell 1 Leg A, Buy 1 Leg B; Quantity: 50; Net price: −$1.68

Result: As proposed, Order 1 would be rejected because it is priced less than or equal to −$0.01. The Exchange notes that the further out expiring call being sold will always be more expensive than a nearer expiring call being bought at the same strike price, and should always generate a credit.[13] Thus, any order to sell the far expiration and buy the near expiration entered with a price of −0.01 or less would result in this order being rejected.

The Exchange notes that the price check in proposed Commentary .06(a)(3) to Rule 980NY is materially identical to price protections available on at least one other options exchange, ISE.[14]

Regarding calendar spread orders, the Exchange also proposes to retain discretion to deactivate this price check in the interest of fair and orderly markets.[15] For example, the Exchange may deactivate this price check if there is a corporate action in a complex symbol that would result in an otherwise valid strategy being rejected by the proposed check.[16] The Exchange believes this discretion to deactivate the Reasonability Check would be consistent with its obligation to assure a fair and orderly market, and that the need for such flexibility is recognized in other Exchange rules, such as those related to position limits, quote-width differentials and price protection filters.[17] As proposed, the Exchange would announce by electronic message to ATP Holders that request to receive such messages if the Exchange deactivates (and later reactivates) the Reasonability Check for calendar spread orders.

Further, the Exchange does not propose to apply the Reasonability Check on calendar orders entered on the Trading Floor, as such orders are subject to manual handling by individuals who will have evaluated the price of an order based on then-market conditions.[18] The Exchange notes that other exchanges that offer price protections similar to those proposed for calendar spreads have similarly retained discretion to limit the application of this check.[19]

The Exchange notes that ECOs that are not rejected by the Reasonability Checks would still be subject to the Price Protection Filter.[20]

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[8] *See* Securities Exchange Act Release No. 71406 (January 27, 2014), 79 FR 31372, 31373 (January 31, 2014) (SR–ISE–2014–05) (''ISE Price Reasonability Filing'') (adopting ''minimum net price'' protection feature, providing that the ISE system would ''reject any complex order strategy where all legs are to buy if it is entered at a price that is less than the minimum price, which is calculated as the sum of the ratio on each leg of the complex order multiplied by $0.01 per leg (*e.g.,* an order to buy 2 calls and buy 1 put would have a minimum price of $0.03)'').

[9] *See* proposed Commentary .06(a)(2) to Rule 980NY.

[10] The principle behind this check is based on the standard trading principle of ''buy low, sell high.'' The ability to buy stock at a lower price is more valuable than the ability to buy stock at a higher price, and thus a call with a lower strike price has more value, and thus is more expensive, than a call with a higher strike price. Similarly, the ability to sell stock at a higher price is more valuable than the ability to sell stock at a lower price, and thus a put with a higher strike price has more value, and thus is more expensive, than a put with a lower strike price.

[11] *See supra* note 9 [sic], ISE Price Reasonability Filing (providing that, subject to certain limitations, the ISE system would ''reject a vertical spread order (*i.e.,* an order to buy a call (put) option and to sell another call (put) option in the same security with the same expiration but at a higher (lower) strike price) when entered with a net price of less than zero''). The Exchange notes that ISE amended Supplementary Material .07(c)(1) to ISE Rule 722 to add a ''pre-set value'' less than zero to allow a buffer within which certain orders would not be rejected. *See, e.g., See* Securities Exchange Act Release No. 72254 (May 27, 2014), 79 FR 31372, 31373 (June 2, 2014) (SR–ISE–2014–26) (''ISE Price Reasonability Modification Filing''). The Exchange has opted to hard code the reject value as −$0.01, which aligns with the ISE Price Reasonability Filing and, would nonetheless operate in a manner similar to ISE's current rule, notwithstanding the ''buffer.''

[12] *See* proposed Commentary .06(a)(3) to Rule 980NY.

[13] The principle behind this check is based on the general concept that locking in a price further into the future involves more risk for the buyer and seller and thus is more valuable, making an option (call or put) with a farther expiration more expensive than an option with a nearer expiration. This is similar, for example, to interest rates for mortgages: In general, an interest rate on a 30-year mortgage is higher than the interest rate on a 15-year mortgage due to the risk of potential interest rate changes over the longer period of time to both the mortgagor and mortgagee.

[14] *See, e.g.,* ISE Rule 722, Supplementary Material .07(c)(3) (providing, in part, that the ISE system will ''reject a calendar spread order (*i.e.,* an order to buy a call (put) option with a longer expiration and to sell another call (put) option with a shorter expiration in the same security at the same strike price) when entered with a net price of less than zero (minus a pre-set value).'' *See also supra* note 12 [sic], ISE Price Reasonability Modification Filing (adopting ISE Rule 722, Supplementary Material .07(c)(2)). Rather than utilize a ''pre-set value'' (or buffer), the Exchange has opted to hard code the reject value as −$0.01. *See id.*

[15] *See* proposed Commentary .06(a)(3)(i) to Rule 980NY.

[16] The Exchange has not similarly retained discretion to deactivate the Reasonability Checks for minimum price and vertical spreads because corporate actions will not create a scenario where a lower strike call would be cheaper than a higher strike call, or a higher strike put will be cheaper than a lower strike put.

[17] *See, e.g.,* Rules 904 (regarding position limits); 925NY (regarding maximum quotation spreads); 967NY (regarding price protection for orders); 925.1NY (regarding price protection for Market Maker quotes) and Commentary .05 to Rule 980NY (regarding the Price Protection Filter for ECOs).

[18] *See* proposed Commentary .06(a)(3)(i) to Rule 980NY.

[19] *See, e.g.,* CBOE Rule 6.53C, Interpretations and Policies .08(c)(6) (excluding from debit/credit reasonability checks ''orders routed from a PAR workstation or order management terminal'' because such orders would be subject to manual handling). The Exchange notes that CBOE's exclusion of complex orders entered on the floor from its debit/credit reasonability checks is not limited to calendar spreads but applies to all such orders entered from the floor of the CBOE.

[20] *See* proposed Commentary .06(b) to Rule 980NY; *see also supra* note 6 [sic].

Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change within 90 days of the effective date of this rule filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes the proposed Reasonability Checks would protect investors and the public interest and maintain fair and orderly markets by mitigating potential risks associated with market participants entering Complex Orders at clearly unintended prices that are inconsistent with their strategies. Specifically, a Complex Order strategy where all legs are to sell (buy) will be rejected if it is entered at a price that is less (more) than the minimum (maximum) price. The Exchange believes it is reasonable to reject such orders upon entry as they are not executable. Allowing such orders to be entered would create investor confusion; as such orders would not receive an execution and would remain pending until canceled. Similarly, the Exchange believes that rejecting orders for vertical spread strategies—as well as calendar spread strategies—that are entered at a negative price also protects investors from executing orders that were likely entered in error.

Regarding orders for calendar spreads, the Exchange recognizes that it may not be appropriate to apply the Reasonability Checks to calendar spreads in unusual market conditions, such as corporate actions that result in changes in price to the underlying security.[23] The Exchange therefore believes it would remove impediments and perfect the mechanism of a free and open market and a national market system for the Exchange to temporarily deactivate the checks in the event of unusual market conditions, which flexibility is consistent with other exchange rules.[24] Further, the Exchange also recognizes that the applicable protections are not appropriate for orders entered manually on the Trading Floor, because such orders would be subject to an additional check of then-market conditions by the individual entering the order, which flexibility is consistent with the rules of other exchanges.[25]

The Exchange's proposed Reasonability Checks are similar to similar protections offered on other options exchanges, including ISE. To the extent there are differences between the proposed Reasonability Checks, as described above (*see supra* notes 12 [sic] and 15 [sic]), the Exchange does not believe such differences raise any new or significant policy concerns. Further, despite the differences, the proposed Reasonability Checks would otherwise operate in a similar manner to the checks on ISE. As such, the Exchange merely desires to adopt functionality that is similar to what already exists on ISE.[26] Permitting the Exchange to operate on an even playing field relative to other exchanges that have similar functionality removes impediments to and perfects the mechanism for a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed Reasonability Checks specify circumstances in which the Exchange would reject certain ECOs in the interest of protecting investors against the execution of erroneous orders or the execution of orders at erroneous prices. As such, the proposal does not impose any burden on competition. To the contrary, the Exchange believes that the proposed Reasonability Checks may foster more competition. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. The Exchange's proposed rule change would enhance its ability to compete with other exchanges that already offer similar reasonability checks. Thus, the Exchange believes that this type of competition amongst exchanges is beneficial to the market place as a whole as it can result in enhanced processes, functionality, and technologies. The Exchange further believes that because the proposed rule change would be applicable to all OTP [sic] Holders and OTP [sic] Firms, it would not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[27] and Rule 19b–4(f)(6) thereunder.[28]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[29] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[30] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE American has asked the Commission to waive the 30-day operative delay. NYSE American believes that waiving the operative delay would protect investors by enabling the Exchange to provide greater protections from potentially erroneous executions and potentially reduce the attendant risks of such executions. As noted above, the proposal provides that a Complex Order strategy where all legs are to sell (buy) will be rejected if it is entered at a price that is less (more) than the minimum (maximum) price. NYSE American notes that such an order is not executable, and that allowing such an order to be entered would create investor confusion because the order would not receive an execution and would remain pending until canceled. Similarly, the Exchange believes that

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *See supra* note 17 [sic].

[24] *See supra* note 18 [sic].

[25] *See supra* note 20 [sic].

[26] *See supra* note 7 [sic].

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[29] 17 CFR 240.19b–4(f)(6).

[30] 17 CFR 240.19b–4(f)(6)(iii).

rejecting orders for vertical and calendar spread strategies that are entered at a negative price will protect investors from executing orders that were likely entered in error.[31] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rules are designed to reduce investor confusion and to prevent the entry and execution of erroneously priced ECOs. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[32]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2017–07 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–NYSEAMER–2017–07. 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–NYSEAMER–2017–07 and should be submitted on or before October 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–19239 Filed 9–11–17; 8:45 am]

BILLING CODE 8011–01–P

[31] As discussed above, the proposal also allows the Exchange to deactivate the Reasonability Check for calendar spread strategies. The Exchange will notify ATP Holders and ATP Firms by electronic message of any such deactivation or re-activation. The Exchange believes that this discretion is necessary because a corporate action, for example, could result in the Reasonability Check for calendar spread strategies rejecting an otherwise valid strategy. The proposal also provides that the Reasonability Check for calendar spread strategies will not apply to ECOs that are entered on the Trading Floor. The Exchange notes that such orders are subject to manual handling by individuals who will have evaluated the price of the order based on market conditions. The Exchange further notes that another exchange has adopted a similar rule. *See* note 19, *supra.*

[32] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32808; File No. 812–14697]

Active Weighting Funds ETF Trust and Active Weighting Advisors LLC

September 6, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act. The requested order would permit certain registered open-end investment companies to acquire shares of certain registered open-end investment companies, registered closed-end investment companies, business development companies, as defined in section 2(a)(48) of the Act (''BDCs''), and registered unit investment trusts (collectively, ''Underlying Funds'') that are within and outside the same group of investment companies as the acquiring investment companies, in excess of the limits in section 12(d)(1) of the Act.

APPLICANTS: Active Weighting Funds ETF Trust (the ''Trust''), a Delaware statutory trust that will be registered under the Act as an open-end management investment company with multiple series, and Active Weighting Advisors LLC (the ''Initial Advisor''), a limited liability company organized under the laws of the state of Delaware that is, or will be, registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on August 31, 2016, and amended on January 13, 2017, and May 25, 2017. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 2, 2017, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, 490 Royal Lake Drive, Cape Girardeau, MO 63701.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Robert H. Shapiro, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order to permit (a) each Fund [1] (each a ''Fund of Funds'') to acquire shares of Underlying Funds [2] in excess of the limits in sections 12(d)(1)(A) and (C) of the Act and (b) each Underlying Fund that is a registered open-end management investment company or series thereof, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 to sell shares of the Underlying Funds to the Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.[3] Applicants also request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying Funds to sell their shares to, and redeem their shares from, the Funds of Funds.[4] Applicants state that such transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act and will be based on the net asset values of the Underlying Funds.

2. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over an Underlying Fund that is not in the same ''group of investment companies'' as the Fund of Funds through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A), (B), and (C) of the Act.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–19236 Filed 9–11–17; 8:45 am]

BILLING CODE 8011–01–P

[1] Applicants request that the order apply not only to any existing series of the Trust, but that the order also extend to any future series of the Trust and any other existing or future registered open-end management investment companies and any series thereof that are, or may in the future be, advised by the Initial Advisor or its successor or any other investment adviser controlling, controlled by, or under common control with the Initial Advisor or its successor and that are part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Trust (together with the existing series of the Trust, each series a ''Fund'' and collectively, the ''Funds''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. For purposes of the request for relief, the term ''group of investment companies'' means any two or more registered investment companies, including closed-end investment companies and BDCs, that hold themselves out to investors as related companies for purposes of investment and investor services.

[2] Certain of the Underlying Funds have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as an exchange-traded fund (''ETF'').

[3] Applicants are not requesting relief for a Fund of Funds to invest in BDCs and registered closed-end investment companies that are not listed and traded on a national securities exchange.

[4] Applicants note that a Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF or closed-end fund through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from sections 17(a)(l) and (2) to permit each Fund of Funds that is an affiliated person, or an affiliated person of an affiliated person, as defined in section 2(a)(3) of the 1940 Act, of an ETF or closed-end fund to purchase or redeem shares from the ETF or closed-end fund. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an ETF, BDC or closed-end fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because an investment adviser to the ETF, BDC or closed-end fund or an entity controlling, controlled by or under common control with the investment adviser to the ETF, BDC or closed-end fund is also an investment adviser to the Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Extension:

Rule 15c1–6, SEC File No. 270–423, OMB Control No. 3235–0472

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c1–6 (17 CFR 240.15c1–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15c1–6 states that any broker-dealer trying to sell to or buy from a customer a security in a primary or secondary distribution in which the broker-dealer is participating or is otherwise financially interested must give the customer written notification of the broker-dealer's participation or interest at or before completion of the transaction. The Commission estimates that 394 respondents collect information annually under Rule 15c1–6 and that each respondent would spend approximately 10 hours annually complying with the collection of information requirement (approximately 3,940 hours in aggregate).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: September 6, 2017.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–19235 Filed 9–11–17; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15283; MISSISSIPPI Disaster Number MS–00102 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Mississippi, dated September 1, 2017.

DATES: Issued on 09/01/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 06/01/2018.

ADDRESS: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

Incident: City of Vicksburg's Main Waterline Rupture.

Incident Period: 05/17/2017 through 05/24/2017.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Warren

Contiguous Counties:

Mississippi: Claiborne, Hinds, Issaquena, Yazoo

Louisiana: East Carroll, Madison, Tensas

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.215
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for economic injury is 152830.

The States which received an EIDL Declaration # are Mississippi, Louisiana.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: September 1, 2017.

Linda E. McMahon,

Administrator.

[FR Doc. 2017–19317 Filed 9–11–17; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10123]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Mark Tobey: Threading Light'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Mark Tobey: Threading Light,'' 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 Addison Gallery of American Art at Phillips Academy, Andover, Massachusetts, from on or about November 4, 2017, until on or about March 11, 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 Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; 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. 2017–19257 Filed 9–11–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10122]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Bosch to Bloemaert: Early Netherlandish Drawings From the Museum Boijmans van Beuningen, Rotterdam'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Bosch to Bloemaert: Early Netherlandish Drawings from the Museum Boijmans van Beuningen, Rotterdam,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, District of Columbia, from on or about October 8, 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 Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; 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. 2017–19256 Filed 9–11–17; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Multiple Reservoir Land Management Plans

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of Record of Decision.

SUMMARY: The Tennessee Valley Authority (TVA) has decided to adopt proposed reservoir land management plans (RLMPs) for the 138,321.4 acres of TVA-managed public land on eight reservoirs in Alabama, Kentucky, and Tennessee: Chickamauga, Fort Loudoun, Great Falls, Kentucky, Nickajack, Normandy, Wheeler and Wilson. TVA is also revising its Comprehensive Valleywide Land Plan (CVLP) to incorporate the information included in the eight RLMPs.

FOR FURTHER INFORMATION CONTACT: Kelly Baxter, Land Planning Specialist, Natural Resources, Tennessee Valley Authority, 400 West Summit Hill Drive, WT–11D, Knoxville, Tennessee 37902–1499; telephone (865) 632–2444; or email *krbaxter@tva.gov.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures for implementing the National Environmental Policy Act. TVA manages public lands to protect the integrated operation of TVA reservoir and power systems, to provide for appropriate public use and enjoyment of the reservoir system, and to provide for continuing economic growth in the Tennessee Valley region. Shortly after its creation in 1933, TVA began a dam and reservoir construction program that required the purchase of approximately 1.3 million acres of land for the creation of 46 reservoirs within the Tennessee Valley region. Most of these lands are now located underneath the water of the reservoir system or have since been sold by TVA or transferred to other state or federal agencies. Today, approximately 293,000 acres of land along TVA reservoirs are managed by TVA for the benefit of the public.

Reservoir land planning is a systematic method of identifying and evaluating the most suitable uses of reservoir lands under TVA stewardship and RLMPs guide future decision-making and the management of reservoir lands in a manner consistent with TVA policies. The updated RLMPs are needed to consider changes to land uses over time, to make land planning decisions on these eight reservoirs consistent with the TVA Land Policy and the CVLP, and to incorporate TVA's goals for managing natural resources on public lands.

On July 21, 2017, TVA issued a Final Environmental Impact Statement (EIS) that considered the eight proposed RLMPs and the associated changes to the CVLP land use allocation target ranges. The eight RLMPs reviewed in the Final EIS address management of approximately 138,221 acres of TVA-managed public lands surrounding Chickamauga, Fort Loudoun, Great Falls, Kentucky, Nickajack, Normandy, Wheeler, and Wilson Reservoirs.

On August 23, 2017, the TVA Board of Directors (TVA Board) approved the Multiple RLMPs and updates to the CVLP, implementing the preferred alternative (Proposed Land Use Alternative) identified in the Final EIS. Under the RLMPs adopted by the TVA Board, TVA-managed land on the eight reservoirs has been allocated into broad land use categories or ''zones'', including Project Operations (Zone 2), Sensitive Resource Management (Zone 3), Natural Resource Conservation (Zone 4), Industrial (Zone 5), Developed Recreation (Zone 6) and Shoreline Access (Zone 7). These allocations guide the types of activities that will be considered on each parcel of land in the future. Non-TVA Shoreland (Zone 1) is applied to reservoir lands where TVA has land rights such as flowage easements. In the Final EIS, TVA considered potential environmental impacts of the eight RLMPs and the land use allocations of reservoir parcels.

In proposing the land use zones, TVA considered previous land use allocations and current land uses, existing land rights (easements, leases, etc.), public needs, the presence of sensitive environmental resources, and TVA policies and guidelines, including the TVA Land Policy and Shoreline Management Policy. Of the eight reservoirs, seven have land use plans that were developed using different methodology and land use categories. Two reservoirs (Fort Loudoun and Normandy) were planned using TVA's Forecast System in the 1960s or 1970s; four reservoirs (Chickamauga, Kentucky, Nickajack, and Wheeler) were planned in the 1980s and 1990s under the Multiple Use Tract Allocation methodology. A land plan has never been developed for Great Falls Reservoir, and only a portion of Wilson Reservoir has been planned previously. Further, previous land planning methodologies did not assign land use designations to all TVA-managed land on the reservoir. In developing the eight RLMPs, TVA applied the Single Use Parcel Allocation methodology which allocates all TVA reservoir land to the seven allocation land use zones identified above. With the approval of these RLMPs, all TVA land plans are now based on the same allocation methodology, ensuring that future management policies can be consistently applied across the Tennessee Valley region, as intended under TVA's 2011 Natural Resource Plan.

In its Natural Resource Plan, TVA established the CVLP to guide allowable uses of TVA-managed properties on 46 reservoirs. The CVLP identifies target ranges for the different types of land use zone allocations for TVA reservoir lands in the Tennessee Valley region and helps TVA to balance competing land use demands. When establishing the CVLP target ranges for the land use zones in 2011, TVA based the ranges on parcel allocation conversions from existing plans as well as ''rapid lands assessments,'' which were initial allocation designations of reservoir parcels conducted in order to establish an initial CVLP target range. Since 2011, TVA has conducted thorough, systematic assessments of parcels on the eight reservoirs and found in many cases that the initial allocation estimates did not accurately reflect actual land uses on parcels, the presence of sensitive resources, or existing land rights or restrictions for parcels. TVA incorporated these allocation corrections into the proposed RLMPs, which resulted in the need to make minor revisions to the CVLP target ranges. Thus, as part of this planning effort, TVA considered changes to the CVLP target ranges according to the zone allocations identified in the RLMPs. No other decisions in the Natural Resource Plan were revised during this planning effort.

Alternatives Considered

In the Final EIS, TVA considered the Proposed Land Use Plan Alternative and the No Action Alternative for managing

1,396 parcels of public land, comprising 138,221.4 acres, under its management around the eight reservoirs. Under both alternatives, TVA would continue to conduct environmental reviews to consider potential site- and project-specific impacts prior to the approval of any proposed development or activity on any parcel. About 56 percent of reservoir lands (76,880 acres) had previous commitments specified in land use agreements (*e.g.,* easements, leases, etc.) or existing plans. No changes to committed lands were proposed under either alternative.

Because of the differences with past and present land planning methodologies, it was necessary to convert the land use designations to one of the seven land use zones to represent the No Action Alternative to facilitate the comparison of the two alternatives. Designations from existing RLMPs and the Forecast System and the committed land that was not assigned a land use designation on all reservoirs were converted to the equivalent land use zone. The conversions are estimates of the appropriate zone allocation based on best available information at that time.

Under the No Action Alternative, TVA would not implement new RLMPs for the eight reservoirs and would continue to rely on previous land planning decisions or current management of parcels. TVA would continue to manage TVA land on Fort Loudoun and Normandy reservoirs as designated under the Forecast System and would continue to manage lands on Chickamauga, Kentucky, Nickajack, and Wheeler reservoirs in accordance with existing RLMPs for those reservoirs. Lands on Great Falls and portions of Wilson were not previously planned and, therefore, would be subject to management in accordance with existing commitments and land use agreements as well as applicable TVA policies. Reservoir lands would not be managed according to TVA's current land use planning zones and would not be in complete alignment with current TVA policies. The target allocation ranges of the CVLP identified in TVA's Natural Resource Plan would not be revised.

Under the Proposed Land Use Plan Alternative, TVA would implement the eight RLMPs detailed in the Final EIS to guide future management on these reservoirs. The TVA managed land would be allocated to land use zones according to current land usage, existing land rights, existing land use agreements, existing and newly collected data, public needs, the presence of sensitive resources, and TVA policies. Generally, land allocations in the eight RLMPs reflect actual uses of parcels, the presence of known sensitive resources, or existing land rights or restrictions for parcels. As such, the changes in allocations are minor.

The approved RLMPs result in changes of zone allocations to 25,558 acres of land, roughly 18 percent of the 138,321.4 acres of TVA-managed reservoir lands (approximately 7 percent of the allocations were made to reflect existing land use agreements and commitments and approximately 11 percent were made for other reasons). Under the eight RLMPs, the total number of acres of TVA lands allocated to Sensitive Resource Management (Zone 3) and Natural Resource Conservation (Zone 4) is slightly lower than previous allocations; the RLMPs reduce Zone 3 lands by 2,289.8 acres and Zone 4 lands by 3,300.3 acres. In turn, the amount of land allocated for Project Operations (Zone 2), Industrial (Zone 5), Developed Recreation (Zone 6), and Shoreline Access (Zone 7) is slightly higher under the RLMPs; an additional 1,622.1 acres are allocated for Zone 2, 1,303.3 acres for Zone 5, 1,644.0 acres for Zone 6, and 1,090.1 acres for Zone 7.

Because of new allocations in the RLMPs, the target allocation ranges of the CVLP are revised under the Proposed Land Use Plan Alternative as follows: The range for Project Operations (Zone 2) is raised from 5 to 7 percent (current) to 7 to 10 percent; Sensitive Resource Management (Zone 3) is adjusted from 16 to 18 percent to 14 to 18 percent; Natural Resource Conservation (Zone 4) is reduced from 58 to 65 percent to 56 to 63 percent; Industrial (Zone 5), is adjusted from 1 to 2 percent to 1 to 3 percent; and Shoreline Access (Zone 7) is adjusted from 5 percent to 5 to 6 percent. There are no changes to the allocation range for Developed Recreation (Zone 6).

Environmental Consequences

In the Final EIS, TVA found that under the No Action Alternative, the total number of acres of TVA land on the eight reservoirs that would be equivalently designated to Project Operations (Zone 2), Industrial (Zone 5) and Developed Recreation (Zone 6) is less than under the Proposed Land Use Alternative. However, proposed land use allocations under the Proposed Land Use Alternative primarily reflect the existing conditions and suitable uses of land and as such, the actual on-the-ground difference between the two alternatives is minor. No significant direct, indirect, or cumulative effects are expected to occur to any resource under either alternative. Under both alternatives, TVA would conduct site-specific environmental reviews of proposed projects on reservoir lands to identify potential impacts to resources, including sensitive resources such as species federally listed as endangered or threatened, cultural resources and wetlands.

In contrast to the No Action Alternative, the Proposed Land Use Alternative was developed using a systematic and comprehensive planning approach to the management, retention, and disposal of reservoir lands managed by TVA. It brings consistency to the land planning process across the eight reservoirs that enables TVA to identify the most suitable use of TVA public lands in furtherance of TVA's responsibilities under the TVA Act. The Proposed Land Use Plan Alternative, then, would result in the benefits of comprehensive land planning across the entire range of lands associated with the eight reservoirs.

Environmentally Preferable Alternative

The Proposed Land Use Plan Alternative, approved by the TVA Board, is the environmentally preferable alternative because the land use allocations under this alternative are the result of thorough research and implementation of TVA's land planning process. This alternative best reflects existing uses and conditions of TVA-managed land and the proposed land use allocations would result in the widest range of beneficial uses without degrading the environment or other undesirable and unintended consequences.

Public Involvement

TVA published a Notice of Intent to prepare the EIS in the **Federal Register** on March 3, 2016. TVA sought input from Federal and state agencies, Federally recognized Indian tribes, local organizations and individuals during a 30-day public scoping period. The most common concerns raised during the scoping period were related to recreation use on Normandy Reservoir parcels (*e.g.,* horseback riding, campground management). Numerous individuals requested information regarding TVA parcels, provided recommendations to TVA on how specific parcels should be managed, or raised general concerns regarding how TVA should manage the public lands. In July 2016, TVA published a Scoping Report that detailed the outreach and input during this period.

The Notice of Availability of the Draft EIS was published in the **Federal Register** on December 2, 2016. TVA

held public meetings on the Draft EIS in January 2017 in Knoxville, Chattanooga, Manchester, and Paris, Tennessee, and in Muscle Shoals, Alabama, and accepted comments until January 31, 2017.

TVA received 44 comment submissions on the Draft EIS and provided responses in the Final EIS. Most comments pertained to the proposed land use allocations of specific parcels of TVA land. In response to numerous substantive comments, TVA made revisions and corrections to the EIS. After considering the public's feedback on the Draft EIS and further internal deliberation, TVA made minor modifications to its Proposed Land Use Plan Alternative. The land use allocations were changed for 4 parcels and parcel boundaries were changed for 41 parcels. Allocation and/or acreage changes were made to reflect new information or changes in land use agreements or changes in back-lying property ownership, to correct errors or omissions, or in response to public comments.

The NOA for the Final EIS was published in the **Federal Register** on July 21, 2017. In the Final EIS, TVA identified the Proposed Land Use Plan Alternative as its preference. Prior to its August 23, 2017 meeting, the TVA Board provided opportunity to the public to comment on the RLMPs and CVLP revision. No comments were received.

Decision

On August 23, 2017, the TVA Board approved the eight RLMPs and the revision of the CVLP, thereby adopting the Proposed Land Use Plan Alternative of the Final EIS. TVA believes the implementation of this plan provides suitable opportunities for balancing competing land use demands for natural and sensitive resource conservation while providing public lands for recreational enjoyment as well as supporting recreation and economic development goals. This decision incorporates mitigation measures that would minimize the potential for adverse impacts to the environment.

Mitigation Measures

Because this is a programmatic review, specific measures to reduce potential environmental impacts on a site-specific level were not identified. Prior to approving any use of land on the eight reservoirs, TVA would conduct an appropriate level of site-specific environmental review to determine the potential environmental effects of the proposed use. TVA's review process for potential actions on these lands is designed to identify ways to avoid and/or minimize potential adverse environmental impacts. Based on the findings of any site-specific environmental review, TVA may require the implementation of appropriate mitigation measures, including best management practices, as conditions of approval for land use on the TVA-managed lands.

When considering future development of reservoir lands, TVA would also comply with other applicable environmental requirements, including the Endangered Species Act, Clean Water Act, Clean Air Act, and applicable Executive Orders, and ensure that proper agency coordination and permitting requirements are met. In addition, all activities will be conducted in accordance with the stipulations defined in the programmatic agreement (PA) between TVA and the State Historic Preservation Officers (SHPO) of Alabama, Kentucky, and Tennessee, the Advisory Council of Historic Preservation, and federally recognized Indian tribes, that was established for implementation of the Natural Resources Plan in 2011. Under the agreement, TVA will consult with the appropriate SHPO and consulting parties when reviewing plans submitted to TVA.

David Bowling,

Vice President, Land and River Management.

[FR Doc. 2017–19310 Filed 9–11–17; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Continuation and Request for Nominations for the Trade and Environment Policy Advisory Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for applications.

SUMMARY: The Office of the United States Trade Representative (USTR) is establishing a new two-year charter term and accepting applications from qualified individuals interested in serving as a member of the Trade and Environment Policy Advisory Committee (TEPAC). The TEPAC is a trade advisory committee that provides general policy advice to the United States Trade Representative on trade policy matters that have a significant impact on the environment.

DATES: USTR will accept nominations on a rolling basis for membership on the TEPAC for the two-year charter term beginning on September 30, 2017, and expiring on September 29, 2019.

FOR FURTHER INFORMATION CONTACT: Stewart Young, Deputy Assistant Trade Representative for Intergovernmental Affairs and Public Engagement, *Stewart.B.Young@ustr.eop.gov* or 202–395–2864, or Sarah Stewart, Deputy Assistant Trade Representative for Environment and Natural Resources, *Sarah_Stewart@ustr.eop.gov* or 202–395–3858.

SUPPLEMENTARY INFORMATION:

1. Background

Section 135(c)(1) of the Trade Act of 1974, as amended (19 U.S.C. 2155(c)(1)), authorizes the President to establish individual general trade policy advisory committees for industry, labor, agriculture, services, investment, defense, small business, and other interests, as appropriate, to provide general policy advice. The President delegated that authority to the United States Trade Representative in Executive Order 11846, section 4(d), issued on March 27, 1975. In addition, we anticipate that the President will issue an Executive Order specifically concerning the TEPAC, which will continue its charter for two years. Advisory committees established by the Trade Representative are subject to the provisions of the Federal Advisory Committee Act. *See* 19 U.S.C. 2155(f); 5 U.S.C. App. II.

Pursuant to these authorities, the United States Trade Representative intends to establish a new two-year charter term for the TEPAC, which will begin on September 30, 2017 and end on September 29, 2019. The TEPAC is a trade advisory committee established to provide general policy advice to the United States Trade Representative on trade policy matters that have a significant impact on the environment. More specifically, the TEPAC provides general policy advice on issues including: (1) Negotiating objectives and bargaining positions before entering into trade agreements; (2) the environmental impact of the implementation of trade agreements; (3) matters concerning the operation of any trade agreement once entered into; and (4) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States.

The TEPAC meets as needed, at the call of the United States Trade Representative or his/her designee, or two-thirds of the TEPAC members, depending on various factors such as the level of activity of trade negotiations

and the needs of the United States Trade Representative.

II. Membership

The TEPAC is composed of not more than 35 members, including, but not limited to, representatives from environmental interest groups, industry (including the environmental technology and environmental services industries), agriculture, academia, consumer groups, services, non-governmental organizations, and others with expertise in trade and environment matters. The United States Trade Representative appoints all TEPAC members for a term of four-years or until the TEPAC charter expires, and they serve at his/her discretion. Individuals can be reappointed for any number of terms. The United States Trade Representative makes appointments without regard to political affiliation and with an interest in ensuring balance in terms of sectors, demographics, and other factors relevant to the USTR's needs. USTR intends for the TEPAC to be broadly representative of key sectors and groups of the economy with an interest in trade and environmental policy issues.

TEPAC members serve without either compensation or reimbursement of expenses. Members are responsible for all expenses they incur to attend meetings or otherwise participate in TEPAC activities.

The United States Trade Representative appoints TEPAC members to represent their sponsoring U.S. entity's interests on trade and the environment, and thus USTR's foremost consideration for applicants is their ability to carry out the goals of section 135(c) of the Trade Act of 1974, as amended. Other criteria include the applicant's knowledge of and expertise in international trade issues as relevant to the work of the TEPAC and USTR. USTR anticipates that almost all TEPAC members will serve in a representative capacity with a limited number serving in an individual capacity as subject matter experts. These members, known as special government employees, are subject to conflict of interest rules and will have to complete a financial disclosure report.

III. Request for Nominations

USTR is soliciting nominations for membership on the TEPAC. To apply for membership, an applicant must meet the following eligibility criteria:

1. The applicant must be a U.S. citizen.

2. The applicant cannot be a full-time employee of a U.S. governmental entity.

3. If serving in an individual capacity, the applicant cannot be a federally registered lobbyist.

4. The applicant cannot be registered with the U.S. Department of Justice under the Foreign Agents Registration Act.

5. The applicant must be able to obtain and maintain a security clearance.

6. For representative members, who will comprise the overwhelming majority of the TEPAC, the applicant must represent a U.S. organization whose members (or funders) have a demonstrated interest in issues relevant to trade and the environment or have personal experience or expertise in trade and the environment. For eligibility purposes, a ''U.S. organization'' is an organization established under the laws of the United States, that is controlled by U.S. citizens, by another U.S. organization (or organizations), or by a U.S. entity (or entities), determined based on its board of directors (or comparable governing body), membership, and funding sources, as applicable. To qualify as a U.S. organization, more than 50 percent of the board of directors (or comparable governing body) and more than 50 percent of the membership of the organization to be represented must be U.S. citizens, U.S. organizations, or U.S. entities. Additionally, at least 50 percent of the organization's annual revenue must be attributable to nongovernmental U.S. sources.

7. For members who will serve in an individual capacity, the applicant must possess subject matter expertise regarding international trade and environmental issues.

In order to be considered for TEPAC membership, interested persons should submit the following to Stewart Young at *Stewart.B.Young@ustr.eop.gov:*

- Name, title, affiliation, and contact information of the individual requesting consideration.
- If applicable, a sponsor letter on the organization's letterhead containing a brief description of the manner in which international trade affects the organization and why USTR should consider the applicant for membership.
- The applicant's personal resume or comprehensive biography.
- An affirmative statement that the applicant and the organization he or she represents meet all eligibility requirements.

USTR will consider applicants who meet the eligibility criteria based on the following factors: Ability to represent the sponsoring U.S. entity's or U.S. organization's and its subsector's interests on trade and environmental matters; knowledge of and experience in trade and environmental matters relevant to the work of the TEPAC and USTR; and ensuring that the TEPAC is balanced in terms of points of view, demographics, geography, and entity or organization size.

Stewart Young,

Deputy Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Engagement, Office of the United States Trade Representative.

[FR Doc. 2017–19296 Filed 9–11–17; 8:45 am]

BILLING CODE 3290–F7–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; correction.

SUMMARY: The Office of the United States Trade Representative (USTR) published a document in the **Federal Register** of August 22, 2017, providing notice of its determination that Togo has adopted an effective visa system and related procedures to prevent the unlawful transshipment of textile and apparel articles and the use of counterfeit documents in connection with the shipment of such articles, and has implemented and follows, or is making substantial progress towards implementing and following, the custom procedures required by the African Growth and Opportunity Act (AGOA), and therefore, imports of eligible products from Togo qualify for the textile and apparel benefits provided under the AGOA. This notice corrects an error in that document.

FOR FURTHER INFORMATION CONTACT: Constance Hamilton, Acting Assistant United States Trade Representative for African Affairs, (202) 395–9514 or *Constance_Hamilton@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 22, 2017, in FR Doc. 2017–17705, 82 FR 39940–41, on page 39941, in the first column, correct the last paragraph of the notice to read as follows:

Accordingly, pursuant to the authority vested in the USTR in Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS, is modified by inserting ''Togo'' in alphabetical sequence in the list of countries, and U.S. notes 1 and 2(d) to subchapter XIX of chapter 98 of the HTS are modified to add in numerical

sequence, in the list of designated sub-Saharan African countries, the name ''Togo,'' in alphabetical sequence. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Imports claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See* 66 FR 7837 (January 25, 2001).

Constance Hamilton,

Acting Assistant United States Trade Representative for African Affairs, Office of the United States Trade Representative.

[FR Doc. 2017–19253 Filed 9–11–17; 8:45 am]

BILLING CODE 3290–F7–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Tennessee Improvement Project in Tennessee

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of U.S.C. 139(I)(1). The actions relate to a proposed highway project, State Route (SR) 162 (Pellissippi Parkway Extension) Improvements, from SR 33 (Old Knoxville Highway) to US 321/SR 73 (Lamar Alexander Parkway) in Blount County, Tennessee. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(I)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 9, 2018. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Ms. Theresa Claxton; Planning and Program Management Team Leader; Federal Highway Administration; Tennessee Division Office; 404 BNA Drive, Building 200, Suite 508; Nashville, Tennessee 37217; Telephone (615) 781–5770; email: *Theresa.Claxton@dot.gov.* FHWA Tennessee Division Office's normal business hours are 7:30 a.m. to 4:00 p.m. (Central Time). You may also contact Susannah Kniazewycz, Environmental Division Director, Tennessee Department of Transportation (TDOT), James K. Polk Building, Suite 900, 505 Deaderick Street, Nashville, Tennessee 37243–0334; Telephone (615) 741–3655, *Susannah.Kniazewycz@tn.gov.* TDOT Environmental Division's normal business hours are 8 a.m. to 4:30 p.m. (Central Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Tennessee: SR 162 (Pellissippi Parkway) Improvements, Blount County, Tennessee. The proposed action will extend and construct a new 4.38-mile section of SR 162 (Pellissippi Parkway) from the current terminus of Pellissippi Parkway/I–140 at SR 33 (Old Knoxville Highway) to US 321/SR 73 (Lamar Alexander Parkway). The Selected Alternative (Preferred Alternative) proposes a four-lane divided highway with two travel lanes in each direction. Portions of the corridor include diamond interchanges to connect the new roadway with SR 33 and US 11/Sevierville Road, and a trumpet interchange to terminate the new roadway at US 321/SR 73.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on September 10, 2015; in the FHWA Record of Decision (ROD) issued on August 31, 2017; and in other documents in the FHWA project records. The FEIS, ROD, and other documents in the FHWA project records are available by contacting the FHWA or TDOT at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at *https://www.tn.gov/tdot/topic/pellissippi,* or viewed at the TDOT—Environmental Division, James K. Polk Building, Suite 900, 505 Deaderick Street, Nashville, Tennessee 37243–0334.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109, 23 U.S.C. 128, and 23 U.S.C. 139].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, and Section 319) [33 U.S.C. 1251–1377].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 13112 Invasive Species; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 13166 Improving Access to Services for Persons with Limited English Proficiency (LEP); E.O. 11514 Protection and Enhancement of Environmental Quality.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1), as amended by the Fixing America's Surface Transportation Act (FAST Act), Pub. L. No. 114–94.

Issued on: August 31, 2017.

Pamela M. Kordenbrock,

Division Administrator, Nashville, Tennessee.

[FR Doc. 2017–19173 Filed 9–11–17; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. DOT–OST–2011–0170]

Notice of Submission of Proposed Information Collection to OMB Agency Request for Renewal of a Previously Approved Collection: Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announces the Department of Transportation's (Department) intention to reinstate an Office of Management and Budget (OMB) control number as related to the *Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases.* The growth in the use of code-sharing, wet-leasing, and similar marketing tools, particularly in international air transportation, led the Department on March 15, 1999, to adopt specific regulations requiring the disclosure of code-sharing arrangements and long-term wet leases by air carriers (U.S. and foreign) and ticket agents via oral, written, and internet communications. In a recent final rule published in the **Federal Register** on November 3, 2016, titled ''Enhancing Airline Passenger Protections'', the Department, among other things, amended the code-share disclosure regulation to require that carriers and ticket agents must disclose any code-share arrangements on their Web sites, including mobile Web sites and applications; clarify the format in which that information must be displayed; and specify that verbal code-share disclosures should be made the first time a flight involving a code-share arrangement is offered to consumers or the first time a consumer inquiries about such a flight whether by telephone or in person conversations.

DATES: Written comments should be submitted by November 13, 2017.

ADDRESSES: You may submit comments (identified by DOT Docket Number OST–2011–0170) through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Hand Delivery:* U.S. Department of Transportation, West Building Ground Floor, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal Holidays. The telephone number is 202–366–9329.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Daeleen Chesley, (202) 366–6792, *Daeleen.Chesley@dot.gov,* Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (C–70), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0537.

Title: Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases.

Abstract: Code-sharing is the name given to a common airline industry marketing practice where, by mutual agreement between cooperating carriers, at least one of the airline designator codes used on a flight is different from that of the airline operating the aircraft. In one version of code-sharing, two or more airlines each use their own designator codes on the same aircraft operation. Although only one airline operates the flight, each airline in a code-sharing arrangement may hold out, market, and sell the flight as its own in published schedules. Code-sharing also refers to other arrangements, such as when a code on a passenger's ticket is not that of the operator of the flight, but where the operator does not hold out the service in its own name. Such code-sharing arrangements are common between commuter air carriers and their larger affiliates. In a wet lease situation, a leasing arrangement is made whereby the lessor provides both an aircraft and crew to a lessee dedicated to a certain route under either an agreement that lasts more than 60 days or under a series of such lease agreements that amount to a continuing arrangement lasting more than 60 days.

Although code-sharing and wet-lease arrangements can offer significant consumer benefits, they can also be misleading unless consumers know the identity of the airline operating the flight. The growth in the use of code-sharing and wet-leasing, particularly in international air transportation, led the Department to adopt specific regulations requiring the disclosure of code-sharing arrangements and long-term wet leases on March 15, 1999 (14 CFR part 257). More specifically, the rule requires carriers to provide information about their code-share relationships in written or electronic schedule information provided by carriers to the public (*e.g.,* the Official Airline Guide/OAG). The rule also requires carriers and ticket agents to disclose code-share information in written notice at the time of a ticket purchase. Further, the regulation requires those entities to tell prospective consumers in all oral communications that the transporting airline is not the airline whose designator code will appear on travel documents and to identify the transporting airline by its corporate name and any other name under which that service is held out to the public.

In 2010, to further enhance these consumer protections, Congress enacted by Public Law 111–216, sec. 210 (August 1, 2010), which was codified as 49 U.S.C. 41712(c). Among other things, the statute requires ticket agents and air carriers (U.S. and foreign) to disclose in oral communication or in written or electronic communications (including on the internet), prior to the purchase of a ticket, the name of the air carrier providing the air transportation and, if the flight has more than one segment, the name of each air carrier providing the air transportation for each flight segment. The statute also requires ticket agents and air carriers (U.S. and foreign) that sell tickets on an Internet Web site to disclose the required information on the first display of their Web site following a consumer's search of a requested itinerary in a format that is easily visible.

In a recent final rule, Enhancing Airline Passenger Protections III (81 FR 76800, November 3, 2016), the Department clarified its code-share disclosure regulation to ensure that carriers and ticket agents disclose code-share arrangements in schedules, advertisements, and communications with consumers. The rule amended the Department's code-share disclosure regulation to codify the statutory requirement that carriers and ticket agents must in a format that is easily visible to a viewer disclose any code-share arrangements on the first display of the Web site following itinerary search results; clarify that the requirement for code-share disclosures in flight itinerary search results and flight schedule displays includes information provided by airlines via mobile Web sites and applications; clarify the format in which that information must be displayed; and specify that verbal code-share disclosures should be made the first time a flight involving a code-share arrangement is offered to consumers or inquired about by consumers during telephone or in person conversations.

As most of these provisions are implementing the statutory requirement

enacted in 2010, carriers and ticket agents should already be complying with most of the requirements.[1] The aspect of the provision which is new is the specification of *when* during a telephone or in-person booking process a carrier or ticket agent must disclose the code-share information, which may result in additional compliance costs for some carriers and ticket agents. Those additional costs would be borne by those carriers and ticket agents that currently do not present code-share information at the first mention of a flight during a reservation call or in-person booking. As such, these carriers and ticket agents may have slightly longer reservation calls and longer in-person bookings. However, the disclosure at a point during the information gathering and decision-making process was already required so the additional time, if any, would be minimal.

In addition to costs for additional agent time during some calls and in-person bookings, some respondents may have a slight increase in their training costs, as they modify their trainings to note that code-share information must be shared when the flight is first presented to the consumer.[2] These additional training costs are likely to be incurred only by those respondents which do not already present code-share information at the first mention of a flight.

A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

This notice addresses the information collection requirements set forth in the Department's regulation requiring disclosure of code-share and wet-leases, 14 CFR 257. The reinstated OMB control number will be applicable to all the provisions set forth in this notice. The title, a description of the respondents, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below:

Title: Disclosure of Code-Sharing Arrangements and Long Term Wet Leases in Flight Itineraries and Schedules, Oral Communications with Prospective Consumers, Ticket Confirmations, and Advertisements.

Respondents: All U.S. air carriers, foreign air carriers, Global Distribution Systems (GDSs, formerly known as computer reservations systems), and travel agents doing business in the United States.

Number of Respondents: 5,031 (estimated 48 marketing carriers and 4,983 travel agents/GDSs).

Frequency:

For transactions involving oral communications: 15 seconds per call (to reveal the code-share information) and an average of 1.5 calls per trip (a total of 22.5 seconds per respondent) for the approximately 25% to 39% (using 2016 Bureau of Transportation Statistic's ((BTS)) data) of itineraries that involve personal contact/phone call and a code-share itinerary.[3]

For transactions involving written and internet disclosure: The burden should be minimal to non-existent as many airlines are already required to submit certain code-share related information to BTS[4] and/or already have code-share information available on their Web sites.[5] In addition, the marketing airlines currently provide information about their code-share flights to the GDSs who, in turn, provide that information to travel agents. As the code-share information is integrated into the data provided by the airlines to GDSs and travel agents, the code-share information is automatically displayed on the internet/computer, as well as on a printed version of an itinerary/ticket.

Total Annual Burden: Annual reporting burden for this data collection is estimated at 195,138 to 304,415-hours for all travel agents and airline ticket agents who have personal contact with a consumer. Most of this data collection is accomplished through travelers using highly automated computerized systems to make their air travel reservation(s) and the data is already available on the regulated entities Web sites and/or is programmed into their database/reservation systems.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on August 28, 2017.

Blane A. Workie,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 2017–18828 Filed 9–11–17; 8:45 am]

BILLING CODE 4910–9X–P

[1] The regulated entities that have a Web site should already have the required information programmed in their systems and that information should already appear on their Web sites. Thus, the incremental costs to add the information to mobile Web sites and applications should be small. To the extent there are any costs, they could be minimized if any necessary changes were incorporated at the same time as another upgrade.

[2] The costs are minimal if this change is incorporated into agent curricula during the same time as other updates and/or sent in an update bulletin via the carrier's/travel agent's intranet system.

[3] Per BTS data, there were 932 million enplanements in 2016 (34% of these flights involve a one-way ticket and 66% involve round-trip travel). It is estimated that 20% of these travelers make a call to an airline or travel agent to book a ticket or obtain information about a flight and each traveler will only need to obtain the information once per travel itinerary. Of those travel itineraries, 25% to 39% involve a code-share flight in which an agent must reveal that information.

[4] Large U.S. carriers must provide BTS with information for the ''Airline Passenger and Destination Survey.'' The reported information must include the name of the marketing carrier, as well as the operating carrier of the flight (which may be a regional or foreign carrier).

[5] For example, many ''reporting'' carriers (*e.g.,* United Airlines) disclose on their Web sites on-time performance information for their domestic code-share flights.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420, Assistant

Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490, Assistant Director for Licensing, tel.: 202–622–2480; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On September 6, 2017, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below:

Individuals

RIAK RENGU, Malek Reuben (a.k.a. REUBEN, Malek; a.k.a. RUBEN, Malek), Juba, South Sudan; DOB 01 Jan 1960; POB Yei, South Sudan; nationality South Sudan; Gender Male; Passport S00001537 (South Sudan); alt. Passport B0810167 (Sudan); Personal ID Card M6000000000817 (South Sudan); Deputy Chief of Defense Force and Inspector General of the Sudan People's Liberation Army; First Lieutenant General (individual) [SOUTH SUDAN].

Designated pursuant to section 1(a)(i) of Executive Order 13664 of April 3, 2014, ''Blocking Property of Certain Persons With Respect to South Sudan'' (E.O. 13664) for being responsible for or complicit in, or having engaged in, directly or indirectly, in or in relation to South Sudan: (1) Actions or policies that threaten the peace, security, or stability of South Sudan; and (2) actions or policies that have the purpose or effect of expanding or extending the conflict in South Sudan or obstructing reconciliation or peace talks or processes.

LUETH, Michael Makuei (a.k.a. LUETH, Michael Makwei; a.k.a. MAKUEI, Michael; a.k.a. MAKUEI, Michael Makuei Lueth), Juba, South Sudan; DOB 1947; POB Bor, South Sudan; alt. POB Bor, Sudan; nationality South Sudan; alt. nationality Sudan; alt. nationality Kenya; Gender Male; Minister of Information and Broadcasting; Minister of Information, Broadcasting, Telecommunication and Postal Services; Government Spokesperson (individual) [SOUTH SUDAN].

Designated pursuant to section 1(a)(i) of Executive Order 13664 of April 3, 2014, ''Blocking Property of Certain Persons With Respect to South Sudan'' (E.O. 13664) for being responsible for or complicit in, or having engaged in, directly or indirectly, in or in relation to South Sudan: (1) Actions or policies that have the purpose or effect of expanding or extending the conflict in South Sudan or obstructing reconciliation or peace talks or processes; (2) obstruction of the activities of international peacekeeping, diplomatic, or humanitarian missions in South Sudan, or of the delivery or distribution of, or access to, humanitarian assistance; and (3) attacks against United Nations missions, international security presences, or other peacekeeping operations;

AWAN, Paul Malong (a.k.a. ANEI, Paul Malong Awan; a.k.a. MALONG, Bol; a.k.a. MALONG, Paul; a.k.a. MALONG, Paul Awan), Warawar, Aweil County, Northern Bahr el-Ghazal, South Sudan; Juba, South Sudan; Kampala, Uganda; Addis Ababa, Ethiopia; P.O. Box 73699, Nairobi 00200, Kenya; DOB 02 Jan 1962; alt. DOB 04 Dec 1960; alt. DOB 12 Apr 1960; alt. DOB 30 Jan 1960; POB Malualkon, Sudan; alt. POB Malualkon, South Sudan; alt. POB Warawar, Sudan; alt. POB Warawar, South Sudan; nationality South Sudan; alt. nationality Uganda; Gender Male; Passport S00004370 (South Sudan); alt. Passport D00001369 (South Sudan); alt. Passport 003606 (Sudan); alt. Passport 00606 (Sudan); alt. Passport B002606 (Sudan); Former Sudan People's Liberation Army Chief of General Staff (individual) [SOUTH SUDAN].

Designated pursuant to section 1(a)(i) of Executive Order 13664 of April 3, 2014, ''Blocking Property of Certain Persons With Respect to South Sudan'' (E.O. 13664) for being responsible for or complicit in, or having engaged in, directly or indirectly, in or in relation to South Sudan: (A) Actions or policies that threaten the peace, security, or stability of South Sudan; (B) actions or policies that have the purpose or effect of expanding or extending the conflict in South Sudan or obstructing reconciliation or peace talks or processes; and (C) obstruction of the activities of international peacekeeping, diplomatic, or humanitarian missions in South Sudan, or of the delivery or distribution of, or access to, humanitarian assistance.

Entities

ALL ENERGY INVESTMENTS LTD, Juba, South Sudan [SOUTH SUDAN].

Designated pursuant to section 1(a)(iv)(B) of Executive Order 13664 of April 3, 2014, ''Blocking Property of Certain Persons With Respect to South Sudan'' (E.O. 13664) for being owned or controlled by, directly or indirectly, RIAK RENGU, Malek Reuben, a person whose property and interests in property are blocked pursuant to E.O. 13664.

A+ ENGINEERING, ELECTRONICS & MEDIA PRINTING CO. LTD., Tongping, Juba, Central Equatorial State, South Sudan; Tax ID No. 1100214326 (South Sudan); Commercial Registry Number 11045 (South Sudan) [SOUTH SUDAN]SUDAN].

Designated pursuant to section 1(a)(iv)(B) of Executive Order 13664 of April 3, 2014, ''Blocking Property of Certain Persons With Respect to South Sudan'' (E.O. 13664) for being owned or controlled by, directly or indirectly, RIAK RENGU, Malek Reuben, a person whose property and interests in property are blocked pursuant to E.O. 13664.

MAK INTERNATIONAL SERVICES CO LTD (a.k.a. MAK INTERNATIONAL SERVICE CO LTD; a.k.a. ''MAK INTERNATIONAL''), Juba, South Sudan [SOUTH SUDAN].

Designated pursuant to section 1(a)(iv)(B) of Executive Order 13664 of April 3, 2014, ''Blocking Property of Certain Persons With Respect to South Sudan'' (E.O. 13664) for being owned or controlled by, directly or indirectly, RIAK RENGU, Malek Reuben, a person whose property and interests in property are blocked pursuant to E.O. 13664.

Dated: September 6, 2017.

John E. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2017–19243 Filed 9–11–17; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2017 American Liberty 225th Anniversary Silver Four-Medal Set

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing the price of the 2017 American Liberty 225th Anniversary Silver Four-Medal Set. Each set will be priced at $199.95.

FOR FURTHER INFORMATION CONTACT: Katrina McDow, Marketing Specialist, Numismatic and Bullion Directorate; United States Mint; 801 9th Street NW., Washington, DC 20220; or call 202–354–8495.

Authority: 31 U.S.C. 5111(a)(2).

Dated: September 7, 2017.

David Motl,

Acting Deputy Director, United States Mint.

[FR Doc. 2017–19316 Filed 9–11–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Public Availability of the Department of Veterans Affairs Fiscal Year (FY) 2015 Service Contract Inventory Report and FY 2016 Service Contract Proposed Analysis

AGENCY: Department of Veterans Affairs.

ACTION: Notice of public availability of the FY 2015 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010, Department of Veterans Affairs is publishing this notice to advise the public of the availability of the FY 2015 Service Contract Inventory Analysis Report and FY 2016 proposed analysis. The FY 2015 analysis report discusses the methodology, analysis, and special interest functions studied from the FY 2015 inventory, as well actions, planned and taken, to address any identified weaknesses or challenges. The inventory information is organized by function to show how contracted resources are distributed throughout the agency. The report and inventory were developed in accordance with guidance issued on November 5, 2010, and updated on December 19, 2011, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/omb/procurement-service-contract-inventories.* The Department of Veterans Affairs has posted the report, inventory, and a summary of the inventory on the Department of Veterans Affairs, Office of Procurement Policy Web site at the following link: *www.va.gov/oal/business/pps/scaInventory.asp.* This information is also publicly available at *www.acquisition.gov/service-contract-inventory,* where the government-wide inventory can be filtered to display the Department of Veterans Affairs inventory data.

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Dr. Sheila Darrell, Director of Procurement Policy and Warrant Management Service, in the Office of Acquisition and Logistics (OA&L) Policy Division (003A2A) at (202) 632–5261 or *Sheila.Darrell@VA.gov.*

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on June 15, 2017, for publication.

Dated: June 15, 2017.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2017–19228 Filed 9–11–17; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Federal Reserve System

12 CFR Parts 217, 249, and 252

Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Parts 217, 249, and 252

[Regulations Q, WW, and YY; Docket No. R–1538]

RIN 7100–AE52

Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions

AGENCY: Board of Governors of the Federal Reserve System (Board), Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule to promote U.S. financial stability by improving the resolvability and resilience of systemically important U.S. banking organizations and systemically important foreign banking organizations pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Under the final rule, any U.S. top-tier bank holding company identified by the Board as a global systemically important banking organization (GSIB), the subsidiaries of any U.S. GSIB (other than national banks, federal savings associations, state nonmember banks, and state savings associations), and the U.S. operations of any foreign GSIB (other than national banks, federal savings associations, state nonmember banks, and state savings associations) would be subjected to restrictions regarding the terms of their non-cleared qualified financial contracts (QFCs). First, a covered entity generally is required to ensure that QFCs to which it is party provide that any default rights and restrictions on the transfer of the QFCs are limited to the same extent as they would be under the Dodd-Frank Act and the Federal Deposit Insurance Act. Second, a covered entity generally is prohibited from being party to QFCs that would allow a QFC counterparty to exercise default rights against the covered entity, directly or indirectly, based on the entry into a resolution proceeding under the Dodd-Frank Act or Federal Deposit Insurance Act, or any other resolution proceeding, of an affiliate of the covered entity. The final rule also amends certain definitions in the Board's capital and liquidity rules; these amendments are intended to ensure that the regulatory capital and liquidity treatment of QFCs to which a covered entity is party is not affected by the final rule's restrictions on such QFCs. The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) are expected to issue final rules that would subject GSIB subsidiaries for which the OCC and FDIC are the appropriate Federal banking agency to requirements substantively identical to those in this final rule.

DATES: The final rule is effective on November 13, 2017.

FOR FURTHER INFORMATION CONTACT: Anna Harrington, Senior Supervisory Financial Analyst (202) 452–6406, or Sean Campbell, Associate Director, (202) 452–3760, Division of Supervision and Regulation; or Will Giles, Senior Counsel, (202) 452–3351, or Lucy Chang, Senior Attorney, (202) 475–6331, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Background

In May 2016, the Board invited comment on a notice of proposed rulemaking (''proposal'' or ''proposed rule'') to impose restrictions on the qualified financial contracts (QFCs)—such as derivatives contracts and repurchase agreements—of U.S. global systemically important banking organizations (GSIBs) and the U.S. operations of global systemically important foreign banking organizations or ''foreign GSIBs'' (collectively, ''covered entities'').[1] The proposal would have required the QFCs of covered entities to contain contractual provisions that opt into the temporary stay-and-transfer treatment of the Federal Deposit Insurance Act (FDI Act) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), thereby reducing the risk that the stay-and-transfer treatment would be challenged by a QFC counterparty or a court in a foreign jurisdiction. The FDI Act and Title II of the Dodd-Frank Act create special resolution frameworks for failed financial firms that provide that the rights of a failed firm's counterparties to terminate their QFCs are temporarily stayed when the firm enters a resolution proceeding to allow for the transfer of the relevant obligations under the QFC to a solvent party. The proposal also would have prohibited the exercise of default rights in QFCs related, directly or indirectly, to the entry into resolution of an affiliate of a covered entity (cross-default rights), subject to certain creditor protection exceptions that would not be expected to interfere with an orderly resolution.

This final rule, which is part of a set of actions by the Board to address the ''too-big-to-fail'' problem, addresses one of the ways in which the severe distress or failure of a major financial firm can destabilize the U.S. financial system. Protecting the financial stability of the United States by helping to address this too-big-to-fail problem is a core objective of the Dodd-Frank Act,[2] which Congress passed in response to the 2007–2009 financial crisis and the ensuing recession. As illustrated by the failure of Lehman Brothers in September of 2008, the failure of a large, interconnected financial company could cause severe damage to the U.S. financial system and, ultimately, to the economy as a whole. The Dodd-Frank Act and the actions that U.S. financial regulators have taken to implement it and to otherwise protect U.S. financial stability help to address the too-big-to-

[1] 81 FR 29169 (May 11, 2016).

[2] The Dodd-Frank Act was enacted on July 21, 2010 (Pub. L. 111–203). According to its preamble, the Dodd-Frank Act is intended ''[t]o promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', [and] to protect the American taxpayer by ending bailouts.''

fail problem in two ways: By reducing the probability that a systemically important financial company will fail, and by reducing the damage that such a company's failure would do if it were to occur. The second of these strategies, which is supported by this final rule, centers on measures designed to help ensure that a failed company's passage through a resolution proceeding—such as bankruptcy or the special resolution process created by the Dodd-Frank Act—would be more orderly, thereby helping to mitigate destabilizing effects on the rest of the financial system.[3]

This final rule represents a further step to increase the resolvability and resilience of U.S. GSIBs and foreign GSIBs that operate in the United States. The final rule complements the Board's final rulemaking on total loss-absorbing capacity, long-term debt, and clean holding company requirements for GSIBs (TLAC final rule)[4] and the ongoing work of the Board and the Federal Deposit Insurance Corporation (FDIC) on resolution planning requirements for GSIBs. The final rule focuses on improving the orderly resolution of a GSIB by limiting disruptions to a failed GSIB through its financial contracts with other companies. In particular, the requirements of the final rule seek to facilitate the orderly resolution of a failed GSIB by limiting the ability of the firm's QFC counterparties to terminate such contracts immediately upon entry of the GSIB or one of its affiliates into resolution. Given the large volume of QFCs to which covered entities are a party, the exercise of default rights en masse as a result of the failure or significant distress of a covered entity could lead to failure and a disorderly resolution if the failed firm were forced to sell off assets, which could spread contagion by increasing volatility and lowering the value of similar assets held by other firms, or to withdraw liquidity that it had provided to other firms.

The largest financial firms are interconnected with other financial firms through large volumes of financial contracts of various types, including derivatives transactions. The severe distress or failure of one entity within a large financial firm can trigger disruptive terminations of these contracts, as the counterparties of both the failed entity and other entities within the same firm exercise their contractual rights to terminate the contracts and liquidate collateral. These terminations, especially if counterparties lose confidence in the GSIB quickly and in large numbers, can destabilize the financial system and potentially spark a financial crisis through several channels. They can destabilize the failed entity's otherwise solvent affiliates, causing them to fail and thereby destabilizing the entire organization, as well as potentially causing their counterparties to fail in a chain reaction that can ripple through the system. They also may result in fire sales of large volumes of financial assets, such as the collateral that secures the contracts, which can in turn weaken and cause stress for other firms by lowering the value of similar assets that they hold.

For example, the triggering of default rights by counterparties of Lehman Brothers (Lehman) in 2008 was a key driver of the destabilization that resulted from its failure.[5] At the time of its failure, Lehman was party to very large volumes of financial contracts, including over-the-counter derivatives contracts.[6] When its holding company declared bankruptcy, Lehman's counterparties exercised their default rights.[7] Lehman's default ''caused disruptions in the swaps and derivatives markets and a rapid, market-wide unwinding of trading positions.'' [8] Meanwhile, ''out-of-the-money counterparties, which owed Lehman money, typically chose not to terminate their contracts'' and instead suspended payment, reducing the liquidity available to the bankruptcy estate.[9] The complexity and disruption associated with Lehman's portfolios of financial contracts led to a disorderly resolution of Lehman.[10] This final rule is meant to help avoid a repeat of the systemic disruptions caused by the Lehman failure by preventing the exercise of default rights in financial contracts from leading to such disorderly and destabilizing severe distress or failures in the future.

This final rule responds to the threat to financial stability posed by such default rights in two ways. First, the final rule reduces the risk that courts in foreign jurisdictions would disregard statutory provisions that would stay the rights of a failed firm's counterparties to terminate their contracts when the firm enters a resolution proceeding under one of the special resolution frameworks for failed financial firms created by Congress under the FDI Act and the Dodd-Frank Act. Second, the final rule facilitates the resolution of a large financial entity under the U.S. Bankruptcy Code and other resolution frameworks by ensuring that the counterparties of solvent affiliates of the failed entity cannot unravel their contracts with the solvent affiliate based solely on the failed entity's resolution.

The Board is issuing this final rule under section 165 of the Dodd-Frank Act, as well as its safety and soundness and other relevant authorities.[11] Section 165 instructs the Board to impose enhanced prudential standards on bank holding companies with total consolidated assets of $50 billion or more ''[i]n order to prevent or mitigate risks to the financial stability of the

[3] The Dodd-Frank Act itself pursues this goal through numerous provisions, including by requiring systemically important financial companies to develop resolution plans (also known as ''living wills'') that lay out how they could be resolved in an orderly manner if they were to fail and by creating a new resolution regime, the Orderly Liquidation Authority, applicable to systemically important financial companies. 12 U.S.C. 5365(d), 5381–5394. Moreover, section 165 of the Dodd-Frank Act directs the Board to promote financial stability through regulation by subjecting large bank holding companies and nonbank financial companies designated for Board supervision to enhanced prudential standards ''[i]n order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions.'' 12 U.S.C. 5365(a)(1).

[4] 82 FR 8266 (Jan. 24, 2017).

[5] *See* ''The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act'' 3, FDIC Quarterly (2011) (''The Lehman bankruptcy had an immediate and negative effect on U.S. financial stability and has proven to be a disorderly, time-consuming, and expensive process.''), *https://www.fdic.gov/bank/analytical/quarterly/2011_vol5_2/lehman.pdf.*

[6] *See* Michael J. Fleming and Asani Sarkar, ''The Failure Resolution of Lehman Brothers,'' FRBNY Economic Policy Review 185 (Dec. 2014), *https://www.newyorkfed.org/medialibrary/media/research/epr/2014/1412flem.pdf.*

[7] *See id.*

[8] ''The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act'' 3, FDIC Quarterly (2011), *https://www.fdic.gov/bank/analytical/quarterly/2011_vol5_2/lehman.pdf.*

[9] Michael J. Fleming and Asani Sarkar, ''The Failure Resolution of Lehman Brothers,'' FRBNY Economic Policy Review 185 (Dec. 2014), *https://www.newyorkfed.org/medialibrary/media/research/epr/2014/1412flem.pdf.*

[10] *See* Mark J. Roe and Stephen D. Adams, ''Restructuring Failed Financial Firms in Bankruptcy: Selling Lehman's Derivatives Portfolio,'' Yale Journal on Regulation (2015) (''Lehman's failure exacerbated the financial crisis, especially after AIG's collapse in the days afterwards prompted counterparties to close out positions, sell collateral, and thereby depress and freeze markets. Many financial players stopped trading for fear that their counterparty would be the next Lehman or that their counterparty had large unseen exposures to Lehman that would make the counterparty itself fail. Such was the case with the Reserve Primary Fund, a money market fund that held too many defaulting obligations of Lehman. That reaction led to a further panic, a threat of a run on money market funds, and a government guarantee of all money market funds to stem the ongoing financial degradation throughout the economy.'').

[11] 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions.'' [12] These enhanced prudential standards must increase in stringency based on the systemic footprint and risk characteristics of covered firms.[13] Section 165 requires the Board to impose enhanced prudential standards of several specified types and also authorizes the Board to establish ''such other prudential standards as the Board of Governors, on its own or pursuant to a recommendation made by the Council, determines are appropriate.'' [14]

The enhanced prudential standards in this final rule are intended to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of a GSIB. In particular, the final rule's requirements are intended to improve the resolvability and resilience of U.S. GSIBs under the U.S. Bankruptcy Code, Title II of the Dodd-Frank Act, or, with reference to insured depository institutions that are GSIB subsidiaries, the FDI Act, and reduce the potential that resolution of the firm will be disorderly and lead to disruptive asset sales and liquidations.

The final rule should also improve the resilience of the U.S. operations of foreign GSIBs, and thereby increase the likelihood that a failed foreign GSIB with U.S. operations would be successfully resolved by its home jurisdiction authorities without the severe distress or failure of the foreign GSIB's U.S. operating entities and with limited effect on the financial stability of the United States.[15]

The Board has tailored this final rule to apply only to those banking organizations whose disorderly failure or severe distress would be likely to pose the greatest risk to U.S. financial stability: The U.S. GSIBs and the U.S. operations of foreign GSIBs. The Board believes that limiting the application of this final rule in this way sensibly balances the costs and benefits of the rule by effectively managing systemic risk while at the same time limiting the burden of compliance by not requiring non-GSIB firms with total assets in excess of $50 billion to comply with any part of this final rule.

Qualified financial contracts, default rights, and financial stability. The final rule pertains to several important classes of financial transactions that are collectively known as ''qualified financial contracts.'' [16] QFCs include derivatives, repurchase agreements (also known as ''repos''), reverse repos, and securities lending and borrowing agreements.[17] GSIBs enter into QFCs for a variety of purposes, including to borrow money to finance their investments, to lend money, to manage risk, and to enable their clients and counterparties to hedge risks, make markets in securities and derivatives, and take positions in financial investments.

QFCs play a role in economically valuable financial intermediation when markets are functioning normally. But they are also a major source of financial interconnectedness, which can pose a threat to financial stability in times of market stress. The final rule focuses on a context in which that threat is especially great: The severe distress or failure of a GSIB that is party to large volumes of QFCs, which are likely to include QFCs with counterparties that are themselves systemically important.

By contract, a party to a QFC generally has the right to take certain actions if its counterparty defaults on the QFC (that is, if it fails to meet certain contractual obligations). Common default rights include the right to suspend performance of the non-defaulting party's obligations, the right to terminate or accelerate the contract, the right to set off amounts owed between the parties, and the right to seize and liquidate the defaulting party's collateral. In general, default rights allow a party to a QFC to reduce the credit risk associated with the QFC by granting it the right to exit the QFC and thereby reduce its exposure to its counterparty upon the occurrence of a specified condition, such as its counterparty's entry into a resolution proceeding.

Where the defaulting party is a GSIB entity, the private benefit of allowing counterparties of GSIBs to take certain actions must be weighed against the harm that these actions may cause by contributing to the severe distress or disorderly failure of a GSIB and increasing the threat to the stability of the U.S. financial system as a whole. For example, if a significant number of QFC counterparties exercise their default rights precipitously and in a manner that would impede an orderly resolution of a GSIB, all QFC counterparties and the financial system may potentially be worse off and less stable.

This may occur through several channels. First, the exits may drain liquidity from a troubled GSIB, forcing the GSIB to rapidly sell off assets at depressed prices, both because the sales must be done within a short timeframe and because the elevated supply may push prices down. These asset fire sales may cause or deepen balance-sheet insolvency at the GSIB, causing a GSIB to fail more suddenly and reducing the amount that its other creditors can recover, thereby imposing losses on those creditors and threatening their solvency. The GSIB may also respond to a QFC run by withdrawing liquidity that it had offered to other firms, forcing them to engage in fire sales. Alternatively, if the GSIB's QFC counterparty itself liquidates the QFC collateral at fire sale prices, the effect will again be to weaken the GSIB's balance sheet as the GSIB marks those assets down to the new fire sale induced price level.[18] The counterparty's rights to set-off amounts owed, terminate the contract, or suspend payments may allow it to further drain the GSIB's capital and liquidity by withholding payments that it would otherwise owe to the GSIB. The GSIB may also have rehypothecated collateral that it received from QFC counterparties, for instance in repo or securities lending transactions that fund other client arrangements, in which case demands from those counterparties for the early

[12] 12 U.S.C. 5365(a)(1).

[13] 12 U.S.C. 5365(a)(1)(B), (b)(3)(A)–(D).

[14] 12 U.S.C. 5365(b)(1)(B)(iv).

[15] As discussed in detail in this **SUPPLEMENTARY INFORMATION** section, this rule is intended to help prevent systemic disruptions that may arise as a result of the exercise of certain contractual rights contained in QFCs entered into by GSIBs or their subsidiaries. This rule includes certain limitations on the exercise of these rights with a view to preventing such systemic disruptions. Separate from these limitations, both Title II of the Dodd-Frank Act and the FDI Act include various restrictions on the exercise of rights by parties to QFCs and provide the FDIC, as receiver of a company subject to resolution under Title II or the FDI Act, with special authorities. None of the provisions of this rule should be construed as being intended to modify or limit, in any manner, the rights and powers of the FDIC as receiver under Title II or the FDI Act, including, without limitation, the rights of the FDIC as receiver to enforce provisions of Title II or the FDI Act that limit the enforceability of certain contractual provisions.

[16] The final rule adopts the definition of ''qualified financial contract'' set out in section 210(c)(8)(D) of the Dodd-Frank Act, 12 U.S.C. 5390(c)(8)(D). *See* final rule § 252.81.

[17] The definition of ''qualified financial contract'' is broader than this list of examples, and the default rights discussed are not common to all types of QFC. *See* final rule § 252.81.

[18] *See* ''The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act'' 8, FDIC Quarterly (2011), *https://www.fdic.gov/bank/analytical/quarterly/2011_vol5_2/lehman.pdf* (''A disorderly unwinding of [qualified financial contracts] triggered by an event of insolvency, as each counterparty races to unwind and cover unhedged positions, can cause a tremendous loss of value, especially if lightly traded collateral covering a trade is sold into an artificially depressed, unstable market. Such disorderly unwinding can have severe negative consequences for the financial company, its creditors, its counterparties, and the financial stability of the United States.'').

return of their rehypothecated collateral could be especially disruptive.[19]

The asset fire sales discussed above can also spread contagion throughout the financial system by increasing volatility and by lowering the value of similar assets held by other firms, potentially causing these firms to suffer mark-to-market losses, diminished market confidence in their own solvency, margin calls, and creditor runs (which could lead to further fire sales, worsening the contagion). Finally, the early terminations of derivatives upon which the surviving entities of the failed GSIB relied to hedge their risks could leave those entities with major risks unhedged, increasing the entities' potential losses going forward.

Where there are significant simultaneous terminations and these effects occur contemporaneously, such as upon the failure or severe distress of a GSIB that is party to a large volume of QFCs, they may pose a substantial risk to financial stability. In short, QFC continuity is important for the orderly resolution of a GSIB because it helps to ensure that the GSIB entities remain viable and to avoid instability caused by asset fire sales.

Consequently, the Board and the FDIC have identified the exercise of certain default rights in financial contracts as a potential obstacle to orderly resolution in the context of resolution plans filed pursuant to section 165(d) of the Dodd-Frank Act[20] and have instructed the most systemically important firms to demonstrate that they are ''amending, on an industry-wide and firm-specific basis, financial contracts to provide for a stay of certain early termination rights of external counterparties triggered by insolvency proceedings.''[21]

Direct defaults and cross-defaults. This final rule focuses on two distinct scenarios in which a non-defaulting party to a QFC is commonly able to exercise the rights described above. These two scenarios involve a default that occurs when either the GSIB legal entity that is a direct party[22] to the QFC or an affiliate of that legal entity enters a resolution proceeding.[23] The first scenario occurs when a GSIB entity that is itself a direct party to the QFC enters a resolution proceeding; this preamble refers to such a scenario as a ''direct default'' and refers to the default rights that arise from a direct default as ''direct default rights.'' The second scenario occurs when an affiliate of the GSIB entity that is a direct party to the QFC (such as the direct party's parent holding company) enters a resolution proceeding; this preamble refers to such a scenario as a ''cross-default'' and refers to default rights that arise from a cross-default as ''cross-default rights.'' For example, a GSIB parent entity might guarantee the derivatives transactions of its subsidiaries, and those derivatives contracts could contain cross-default rights against a subsidiary of the GSIB that would be triggered by the bankruptcy filing of the GSIB parent entity even though the subsidiary continues to meet all of its financial obligations.[24]

Importantly, this final rule does not affect all types of default rights. Moreover, the final rule is concerned only with default rights that run *against* a GSIB—that is, direct default rights and cross-default rights that arise from the entry into resolution of a GSIB entity. The final rule does not affect default rights that a GSIB entity (or any other entity) may have against a counterparty that is not a GSIB entity. This limited scope is appropriate because, as described above, the risk posed to financial stability by the exercise of QFC default rights is greatest when the defaulting counterparty is a GSIB entity.

Single-point-of-entry resolution. Cross-default rights are especially significant in the context of a GSIB failure because GSIBs typically enter into large volumes of QFCs through different entities controlled by the GSIB. For example, a U.S. GSIB is made up of a U.S. bank holding company and numerous operating subsidiaries that are owned, directly or indirectly, by the bank holding company. From the standpoint of financial stability, the most important of these operating subsidiaries are generally a U.S. insured depository institution, a U.S. broker-dealer, and similar entities organized in other countries.

Many complex GSIBs have developed resolution strategies that rely on a single-point-of-entry (SPOE) resolution strategy. In an SPOE resolution of a GSIB, only a single legal entity—the GSIB's top-tier bank holding company—would enter a resolution proceeding. The losses that led to the GSIB's failure would be passed up from the operating subsidiaries that incurred the losses to the holding company and would then be imposed on the equity holders and unsecured creditors of the holding company through the resolution process.[25] This strategy is designed to help ensure that the GSIB subsidiaries remain adequately capitalized and that operating subsidiaries of the GSIB are able to continue to meet their financial obligations without defaulting or entering resolution themselves. The expectation that the holding company's equity holders and unsecured creditors would absorb the GSIB's losses in the event of failure would help to maintain the confidence of the operating subsidiaries' creditors and counterparties (including their QFC

[19] *See generally* Adam Kirk, James McAndrews, Parinitha Sastry, and Phillip Weed, ''Matching Collateral Supply and Financing Demands in Dealer Banks,'' FRBNY Economic Policy Review 127 (Dec. 2014), *http://www.newyorkfed.org/medialibrary/media/research/epr/2014/1412kirk.pdf*.

[20] 12 U.S.C. 5365(d).

[21] Board and FDIC, ''Agencies Provide Feedback on Second Round Resolution Plans of 'First-Wave' Filers'' (Aug. 5, 2014), *http://www.federalreserve.gov/newsevents/press/bcreg/20140805a.htm. See also* Board and FDIC, ''Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015,'' (Mar. 24, 2017), *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf*; Board and FDIC, ''Guidance for 2017 § 165(d) Annual Resolution Plan Submissions By Domestic Covered Companies that Submitted Resolution Plans in July 2015,'' (Apr. 13, 2016), *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20160413a1.pdf*; Board and FDIC, ''Agencies Provide Feedback on Resolution Plans of Three Foreign Banking Organizations,'' (Mar. 23, 2015), *http://www.federalreserve.gov/newsevents/press/bcreg/20150323a.htm*; Board and FDIC, ''Guidance for 2013 165(d) Annual Resolution Plan Submissions by Domestic Covered Companies that Submitted Initial Resolution Plans in 2012'' (Apr. 15, 2013), *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20130415c2.pdf*.

[22] In general, a ''direct party'' refers to a party to a financial contract other than a credit enhancement (such as a guarantee). The definition of ''direct party'' and related definitions are discussed in more detail below.

[23] This preamble uses phrases such as ''entering a resolution proceeding'' and ''going into resolution'' to encompass the concept of ''becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding.'' These phrases refer to proceedings established by law to deal with a failed legal entity. In the context of the failure of a systemically important banking organization, the most relevant types of resolution proceeding include the following: For most U.S.-based legal entities, the bankruptcy process established by the U.S. Bankruptcy Code (Title 11, United States Code); for U.S. insured depository institutions, a receivership administered by the FDIC under the FDI Act (12 U.S.C. 1821); for companies whose ''resolution under otherwise applicable Federal or State law would have serious adverse effects on the financial stability of the United States,'' the Dodd-Frank Act's Orderly Liquidation Authority (12 U.S.C. 5383(b)(2)); and, for entities based outside the United States, resolution proceedings created by foreign law.

[24] *See* Michael J. Fleming and Asani Sarkar, ''The Failure Resolution of Lehman Brothers,'' FRBNY Economic Policy Review 185 (Dec. 2014), *https://www.newyorkfed.org/medialibrary/media/research/epr/2014/1412flem.pdf*.

[25] The Board's final rule regarding total loss-absorbing capacity, long term debt and clean holding company requirements (TLAC rule) addresses the need for adequate external loss-absorbing capacity at the holding company level by requiring the top-tier holding companies of the U.S. GSIBs and the U.S. intermediate holding companies of foreign GSIBs to maintain outstanding required levels of unsecured long-term debt and TLAC, which is defined to include both tier 1 capital and eligible long-term debt. *See* 82 FR 8266, 8287 (Jan. 24, 2017).

counterparties), reducing their incentive to engage in potentially destabilizing funding runs or margin calls and thus lowering the risk of asset fire sales. A successful SPOE resolution would also avoid the need for separate resolution proceedings for separate legal entities run by separate authorities across multiple jurisdictions, which would be more complex and could therefore destabilize the resolution of a GSIB.

The Board's TLAC rule is intended to help, though not exclusively, to lay the foundation necessary for the SPOE resolution of a GSIB by requiring the top-tier holding companies of U.S. GSIBs and the U.S. intermediate holding companies of foreign GSIBs to maintain sufficient amounts of loss-absorbing capacity that could be used for resolution and to adopt a ''clean holding company'' structure, under which certain financial activities that could pose obstacles to orderly resolution would be impermissible for the holding company and could only be conducted by its operating subsidiaries.[26]

Other orderly resolution strategies. This final rule is also intended to yield benefits for other approaches to resolution. For example, preventing early terminations of QFCs would increase the prospects for an orderly resolution under a multiple-point-of-entry (MPOE) strategy involving a foreign GSIB's U.S. intermediate holding company going into resolution or a resolution plan that calls for a GSIB's U.S. insured depository institution to enter resolution under the FDI Act. As discussed above, the final rule should help support the continued operation of one or more affiliates of an entity that has entered resolution to the extent the affiliate continues to perform on its QFCs.

U.S. Bankruptcy Code. When an entity goes into resolution under the U.S. Bankruptcy Code, attempts by the debtor entity's creditors to enforce their debts through any means other than participation in the bankruptcy proceeding (for instance, by suing in another court, seeking enforcement of a preexisting judgment, or seizing and liquidating collateral) are generally blocked by the imposition of an automatic stay.[27] A key purpose of the automatic stay, and of bankruptcy law in general, is to maximize the value of the bankruptcy estate and the creditors' ultimate recoveries by facilitating an orderly liquidation or restructuring of the debtor. The automatic stay thus solves a collective action problem in which the creditors' individual incentives to become the first to recover as much from the debtor as possible, before other creditors can do so, collectively cause a value-destroying disorderly liquidation of the debtor.[28]

However, the U.S. Bankruptcy Code largely exempts QFC[29] counterparties of the debtor from the automatic stay through special ''safe harbor'' provisions.[30] Under these provisions, any rights that a QFC counterparty has to terminate the contract, set-off obligations, or liquidate collateral in response to a direct default are not subject to the stay and may be exercised against the debtor immediately upon default. (The U.S. Bankruptcy Code does not itself confer default rights upon QFC counterparties; it merely permits QFC counterparties to exercise certain rights created by other sources, such as contractual rights created by the terms of the QFC.)

The U.S. Bankruptcy Code's automatic stay also does not prevent the exercise of cross-default rights against an affiliate of the party entering resolution. The stay generally applies only to actions taken against the party entering resolution or the bankruptcy estate,[31] whereas a QFC counterparty exercising a cross-default right is instead acting against a distinct legal entity that is not itself in resolution—the debtor's affiliate.

Title II of the Dodd-Frank Act and the Orderly Liquidation Authority. Title II of the Dodd-Frank Act imposes stay requirements on QFCs of financial companies that enter resolution under that Title. In general, no financial firm (regardless of size) is too-big-to-fail and a U.S. bank holding company (such as the top-tier holding company of a U.S. GSIB) that fails would be resolved under the U.S. Bankruptcy Code. Congress recognized, however, that a financial company might fail under extraordinary circumstances in which an attempt to resolve it through the bankruptcy process would have serious adverse effects on financial stability in the United States. Title II of the Dodd-Frank Act establishes the Orderly Liquidation Authority (OLA), an alternative resolution framework intended to be used in rare circumstances to manage the failure of a firm that poses a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard.[32] Title II authorizes the Secretary of the Treasury, upon the recommendation of other government agencies and a determination that several preconditions are met, to place a financial company into a receivership conducted by the FDIC as an alternative to bankruptcy.[33]

Title II empowers the FDIC to transfer the QFCs to a bridge financial company or some other financial company that is not in a resolution proceeding and should therefore be capable of performing under the QFCs.[34] To give the FDIC time to effect this transfer, Title II temporarily stays QFC counterparties of the failed entity from exercising termination, netting, and collateral liquidation rights ''solely by reason of or incidental to'' the failed entity's entry into OLA resolution, its insolvency, or its financial condition.[35] Once the QFCs are transferred in accordance with the statute, Title II permanently stays the exercise of default rights for those reasons.[36]

Title II addresses cross-default rights through a similar procedure. It empowers the FDIC to enforce contracts of subsidiaries or affiliates of the failed covered financial company that are ''guaranteed or otherwise supported by or linked to the covered financial company, notwithstanding any contractual right to cause the termination, liquidation, or acceleration of such contracts based solely on the insolvency, financial condition, or receivership of'' the failed company, so long as, if such contracts are guaranteed or otherwise supported by the covered financial company, the FDIC takes certain steps to protect the QFC counterparties' interests by the end of the business day following the company's entry into OLA resolution.[37]

These stay-and-transfer provisions of the Dodd-Frank Act are intended to mitigate the threat posed by QFC default rights. At the same time, the provisions allow appropriate protections for QFC counterparties of the failed financial

[26] *See* 82 FR 8266 (Jan. 24, 2017).

[27] *See* 11 U.S.C. 362.

[28] *See, e.g., Aiello* v. *Providian Financial Corp.,* 239 F.3d 876, 879 (7th Cir. 2001).

[29] The U.S. Bankruptcy Code does not use the term ''qualified financial contract,'' but the set of transactions covered by its safe harbor provisions closely tracks the set of transactions that fall within the definition of ''qualified financial contract'' used in Title II of the Dodd-Frank Act and in this final rule.

[30] 11 U.S.C. 362(b)(6), (7), (17), (27), 362(o), 555, 556, 559, 560, 561. The U.S. Bankruptcy Code specifies the types of parties to which the safe harbor provisions apply, such as financial institutions and financial participants. *Id.*

[31] *See* 11 U.S.C. 362(a).

[32] Section 204(a) of the Dodd-Frank Act, codified at 12 U.S.C. 5384(a).

[33] *See* section 203 of the Dodd-Frank Act, codified at 12 U.S.C. 5383.

[34] *See* 12 U.S.C. 5390(c)(9).

[35] 12 U.S.C. 5390(c)(10)(B)(i)(I). This temporary stay generally lasts until 5:00 p.m. eastern time on the business day following the appointment of the FDIC as receiver.

[36] 12 U.S.C. 5390(c)(10)(B)(i)(II).

[37] 12 U.S.C. 5390(c)(16).

company. The provisions stay only the exercise of default rights based on the failed company's entry into resolution, the fact of its insolvency, or its financial condition. Further, the stay period is brief, unless the FDIC transfers the QFCs to another financial company that is not in resolution (and should therefore be capable of performing under the QFCs) or, if applicable, provides adequate protection that the QFCs will be performed.

The Federal Deposit Insurance Act. Under the FDI Act, a failing insured depository institution would generally enter a receivership administered by the FDIC.[38] The FDI Act addresses direct default rights in the failed bank's QFCs with stay-and-transfer provisions that are substantially similar to the provisions of Title II of the Dodd-Frank Act discussed above.[39] However, the FDI Act does not address cross-default rights, leaving the QFC counterparties of the failed depository institution's affiliates free to exercise any contractual rights they may have to terminate, net, or liquidate collateral based on the depository institution's entry into resolution. Moreover, as with Title II of the Dodd-Frank Act, there is a possibility that a court of a foreign jurisdiction might decline to enforce the FDI Act's stay-and-transfer provisions under certain circumstances.

B. Notice of Proposed Rulemaking and General Summary of Comments

The proposal was intended to increase GSIB resolvability and resiliency by addressing two QFC-related issues. First, the proposal sought to address the risk that a court in a foreign jurisdiction may decline to enforce the QFC stay-and-transfer provisions of Title II and the FDI Act discussed above. Second, the proposal sought to address the potential disruption that may occur if a counterparty to a QFC with an affiliate of a GSIB entity that goes into resolution under the U.S. Bankruptcy Code or the FDI Act exercises cross-default rights.

Scope of application. The proposal's requirements would have applied to all ''covered entities.'' Under the proposal, ''covered entity'' included: Any U.S. top-tier bank holding company identified as a GSIB under the Board's rule establishing risk-based capital surcharges for GSIBs (GSIB surcharge rule);[40] any subsidiary of such a bank holding company; and any U.S. subsidiary, U.S. branch, or U.S. agency of a foreign GSIB.[41] ''Covered entity'' did not include national banks and Federal savings associations that are supervised by the Office of the Comptroller of the Currency (OCC), because the OCC was expected to issue, and ultimately did issue, a proposed rule that would subject those institutions to requirements substantively identical to those proposed by the Board's rule for covered entities.

In the proposal, ''qualified financial contract'' or ''QFC'' was defined to have the same meaning as in section 210(c)(8)(D) of the Dodd-Frank Act,[42] and included, among other things, derivatives, repos, and securities borrowing and lending agreements. Subject to the exceptions discussed below, the proposal's requirements would have applied to any QFC to which a covered entity is party (covered QFC). Under the proposal, a covered entity would have been required to conform pre-existing QFCs if a covered entity enters into a new QFC with a counterparty or its affiliate.

Required contractual provisions related to the U.S. Special Resolution Regimes. Under the proposal, covered entities would have been required to ensure that covered QFCs include contractual terms explicitly providing that any default rights or restrictions on the transfer of the QFC are limited to at least the same extent as they would be pursuant to the OLA and the FDI Act (U.S. Special Resolution Regimes).[43] The proposed requirements were not intended to imply that the statutory stay-and-transfer provisions would not in fact apply to a given QFC, but rather to help ensure that all covered QFCs would be treated the same way in the context of an FDIC receivership under the Dodd-Frank Act or the FDI Act. This provision was intended to address the first issue listed above and to decrease the QFC-related threat to financial stability posed by the failure and resolution of an internationally active GSIB. This section of the proposal was also consistent with analogous legal requirements that have been imposed in other national jurisdictions[44] and with the Financial Stability Board's ''Principles for Cross-border Effectiveness of Resolution Actions.''[45]

Prohibited cross-default rights. Under the proposal, a covered entity would have been prohibited from entering into covered QFCs that would allow the exercise of cross-default rights—that is, default rights related, directly or indirectly, to the entry into resolution of an affiliate of the direct party—against it.[46] Covered entities would have been similarly prohibited from entering into covered QFCs that included a restriction on the transfer of a credit enhancement supporting the QFC from the covered entity's affiliate to a transferee upon the entry into resolution of the affiliate.

The Board did not propose to prohibit a covered entity from entering into QFCs that allow its counterparties to exercise direct default rights against the covered entity. Under the proposal, a covered entity also could, to the extent not inconsistent with Title II or the FDI Act, enter into a QFC that grants its counterparty the right to terminate the QFC if the covered entity fails to perform its obligations under the QFC.

Industry-developed protocol. As an alternative to bringing their covered QFCs into compliance with the requirements set out in the proposed rule, covered entities would have been permitted to comply with the requirements of the proposed rule by adhering to the International Swaps and Derivatives Association (ISDA) 2015 Universal Resolution Stay Protocol, including the Securities Financing Transaction Annex and the Other Agreements Annex (together, the ''Universal Protocol'').[47] The preamble to the proposal explained that the Board viewed the Universal Protocol as achieving an outcome consistent with the outcome intended by the requirements of the proposed rule by

[38] 12 U.S.C. 1821(c).

[39] *See* 12 U.S.C. 1821(e)(8)–(10).

[40] 12 CFR 217.402; 80 FR 49106 (Aug. 14, 2015).

[41] *See* proposed rule § 252.81.

[42] 12 U.S.C. 5390(c)(8)(D). *See* proposed rule § 252.81.

[43] *See* proposed rule § 252.83.

[44] *See, e.g.,* Bank of England Prudential Regulation Authority, Policy Statement, ''Contractual stays in financial contracts governed by third-country law'' (Nov. 2015), *http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2515.pdf.*

[45] Financial Stability Board, ''Principles for Cross-border Effectiveness of Resolution Actions'' (Nov. 3, 2015), *http://www.fsb.org/wp-content/uploads/Principles-for-Cross-border-Effectiveness-of-Resolution-Actions.pdf.*

The Financial Stability Board (FSB) was established in 2009 to coordinate the work of national financial authorities and international standard-setting bodies and to develop and promote the implementation of effective regulatory, supervisory, and other financial sector policies to advance financial stability. The FSB brings together national authorities responsible for financial stability in 24 countries and jurisdictions, as well as international financial institutions, sector-specific international groupings of regulators and supervisors, and committees of central bank experts. *See generally* Financial Stability Board, *http://www.fsb.org.*

[46] *See* proposed rule § 252.83(b).

[47] ISDA, ''Attachment to the ISDA 2015 Universal Resolution Stay Protocol,'' (Nov. 4, 2015), *http://assets.isda.org/media/ac6b533f-3/5a7c32f8-pdf/.* *See* proposed rule § 252.85(a).

similarly limiting direct default rights and cross-default rights.

Process for approval of enhanced creditor protection conditions. The proposal also would have allowed the Board, at the request of a covered entity, to approve as compliant with the proposal covered QFCs with creditor protections other than those that would otherwise be permitted under section 252.84 of the proposal.[48] The Board would have been permitted to approve such a request if, in light of several enumerated considerations,[49] the alternative creditor protections would mitigate risks to the financial stability of the United States presented by a GSIB's failure to at least the same extent as the proposed requirements.

Amendments to certain definitions in the Board's capital and liquidity rules. The proposal also would have amended certain definitions in the Board's capital and liquidity rules to help ensure that the regulatory capital and liquidity treatment of QFCs to which a covered entity is party would not be affected by the proposed restrictions on such QFCs. Specifically, the proposal would have amended the definition of ''qualifying master netting agreement'' in the Board's regulatory capital and liquidity rules and would similarly amend the definitions of the terms ''collateral agreement,'' ''eligible margin loan,'' and ''repo-style transaction'' in the Board's regulatory capital rules.

Comments on the Proposal. The Board received approximately 30 comments on the proposed rule from banking organizations, trade associations, public interest advocacy groups, and private individuals. Board staff also met with some commenters at their request to discuss their comments on the proposal, and summaries of these meetings may be found on the Board's public Web site.

A number of commenters, including GSIBs that would be subject to the requirements of the proposal, expressed strong support for the proposed rule as a well-considered effort to reduce systemic risk with minimal burden and as one of the last important steps to ensure a more efficient and orderly resolution process for all covered entities and thereby to protect the stability of the U.S. financial system. Other commenters, however, expressed concern with the proposed rule. These commenters generally argued that the proposal should not restrict contractual rights of GSIB counterparties and contended that the proposal shifts the costs of resolving the covered entities to non-defaulting counterparties. Some commenters argued that the proposal would not assuredly mitigate systemic risk, as the requirements could result in increased market and credit risk for QFC counterparties of a GSIB. Commenters also argued that it would be more appropriate for Congress to impose the proposal's restrictions on contractual rights through the legislative process rather than for the Board to do so through a regulation.

As described above, the proposal applied to ''covered entities,'' which was defined to mean all U.S. GSIBs and their subsidiaries, as well as the U.S. operations (subsidiaries, branches, and agencies) of GSIBs that are foreign banking organizations. The proposal generally defined ''subsidiary'' as an entity controlled by a GSIB under the Bank Holding Company Act (BHC Act). Commenters urged the Board to move to a financial consolidation standard to define the subsidiaries of covered entities, arguing that the concept of control under the BHC Act includes entities (1) that are not under the operational control of the GSIB and over whom the GSIB does not have the practical ability to require remediation and (2) which are unlikely to raise the types of concerns for the orderly resolution of GSIBs targeted by the proposal. For similar reasons, these commenters argued that, for purposes of the requirement that a covered entity conform existing QFCs if a covered entity enters into a new QFC with a counterparty or its affiliate, a counterparty's ''affiliate'' should also be defined by reference to financial consolidation rather than BHC Act control.

Commenters also expressed concern that the definition of ''covered QFCs'' under the proposal was overly broad. The proposal required a covered QFC to explicitly provide that it is subject to the stay-and-transfer provisions of Title II and the FDI Act and prohibited a covered entity from being a party to a QFC that would allow the exercise of cross-default rights. Commenters argued that the final rule should exclude QFCs that do not contain any contractual transfer restrictions, direct default rights, or cross-default rights, as these QFCs do not give rise to the risk that counterparties will exercise their contractual rights in a manner that is inconsistent with the provisions of the U.S. Special Resolution Regimes. Commenters also urged the Board to exclude QFCs governed by U.S. law from the requirement that QFCs explicitly ''opt in'' to the U.S. Special Resolution Regimes since it is already sufficiently clear that such QFCs are subject to the stay-and-transfer provisions of Title II and the FDI Act. With respect to the proposal's prohibition against provisions that would allow the exercise of cross-default rights in covered QFCs of a GSIB, commenters argued that the final rule should clarify that QFCs that do not contain such cross-default rights or transfer restrictions regarding related credit enhancements are not within the scope of the prohibition.

Commenters also requested that certain types of contracts that may include transfer or default rights subject to the proposal's requirements (*e.g.,* warrants; certain commodity contracts, including commodity swaps; certain utility and gas supply contracts; certain retail customer and investment advisory agreements; securities underwriting agreements; securities lending authorization agreements) be excluded from all requirements of the final rule because these types of contracts do not raise the risks to the resolution of a covered entity or financial stability that are the target of this final rule and because certain existing contracts of these types would be difficult, if not impossible, to amend. Commenters also requested that securities contracts that typically settle in the short term or that typically include only transfer restrictions and not default rights similarly be excluded from all requirements of the final rule because they do not impose ongoing or continuing obligations on either party after settlement. In all of the above cases, commenters argued that remediation of such outstanding contracts would be burdensome with no meaningful resolution benefits. Certain commenters also urged the Board to apply the final rule only to contracts entered into after the final rule's effective date and not to contracts existing as of the final rule's effective date.

As noted above, the proposal would have deemed compliant covered QFCs amended by the existing Universal Protocol (which allows for creditor protections in addition to those otherwise permitted by the proposed rule). Commenters generally supported this aspect of the proposal, although they requested express clarification that adherence to the existing Universal Protocol would satisfy all of the requirements of the final rule. Commenters urged that the final rule should also provide a safe harbor for a future ISDA protocol that would be substantially similar to the existing Universal Protocol except that it would seek to address the specific needs of buy-side market participants, such as

[48] *See* proposed rule § 252.85.

[49] *See* proposed rule § 252.85(c).

asset managers, insurance companies, and pension funds who are counterparties to QFCs with GSIBs, to allow, for example, entity-by-entity adherence and the exclusion of certain foreign special resolution regimes.

Commenters expressed support for the exemption in the proposal for cleared QFCs but requested that this exemption be broadened to extend to the client leg of a cleared back-to-back transaction and also to exclude any contract cleared, processed, or settled on a financial market utility (FMU) as well as any QFC conducted according to the rules of an FMU. Commenters also requested an exemption for QFCs with sovereign entities and central banks. Commenters further requested a longer period of time for covered entities to conform covered QFCs with certain types of counterparties to comply with the requirements of the final rule. Commenters also requested that the Board coordinate with other regulatory agencies, consider comments submitted to the OCC regarding its proposal and from entities not regulated by the Board, and finalize a rule with conformance periods consistent with the OCC's final rule. In addition, commenters requested confirmation that modifications to contracts to comply with this rule would not trigger other regulatory requirements (*e.g.,* margin requirements for non-cleared swaps) or impact the enforceability of QFCs. The Board has considered the comments received on this proposal, including those of entities not regulated by the Board, as well as the comments submitted to the OCC and FDIC regarding their respective proposals, and these comments and changes in the final rule are described in more detail throughout the remainder of this **SUPPLEMENTARY INFORMATION**.

C. Overview of Final Rule

The Board is adopting this final rule to improve the resolvability and resilience of GSIBs and thereby reduce threats to financial stability. The Board has made a number of changes to the proposal in response to concerns raised by commenters, as further described below.

The final rule is intended to facilitate the orderly resolution of the most systemically important banking firms—the GSIBs—by limiting the ability of the firms' counterparties to terminate QFCs upon the entry of the GSIB or one or more of its affiliates into resolution. The rule requires the inclusion of contractual restrictions on the exercise of certain default rights in those QFCs. In particular, the final rule requires the QFCs of covered entities to contain contractual provisions that opt into the stay-and-transfer treatment of the FDI Act and the Dodd-Frank Act to reduce the risk that the stay-and-transfer treatment would be challenged by a QFC counterparty or a court in a foreign jurisdiction. The final rule also prohibits covered entities from entering into QFCs that contain cross-default rights, subject to certain creditor protection exceptions that would not be expected to interfere with an orderly resolution.

The final rule also facilitates the implementation of the Universal Protocol, which can extend, through contractual agreement, the application of the resolution frameworks of the FDI Act and the Dodd-Frank Act to all QFCs entered into by a GSIB and its subsidiaries, including QFCs entered into by covered entities outside of the United States, and establishes restrictions on cross-default rights that are similar to those in the final rule. The final rule is necessary to implement the Universal Protocol provisions regarding the resolution of a GSIB under the U.S. Bankruptcy Code, as these provisions do not become effective until implemented by U.S. regulations. To support further adherence to the Universal Protocol, the final rule creates a safe harbor allowing covered entities to sign up to the Universal Protocol and thereby amend their QFCs pursuant to the Universal Protocol as an alternative to implementing the restrictions of the final rule on a counterparty-by-counterparty basis. In addition, the final rule provides that covered QFCs amended pursuant to adherence of a covered entity to a new protocol (the ''U.S. Protocol'') would be deemed to conform to the requirements of the final rule. The U.S. Protocol may differ from the Universal Protocol in the certain respects discussed below, but otherwise must be substantively identical to the Universal Protocol.

The final rule requires covered entities to conform certain covered QFCs to the requirements of the final rule on the first day of the first calendar quarter that begins a year after issuance of the final rule (first compliance date) and phases in conformance requirements with respect to all covered QFCs over a two-year period depending on the type of counterparty. As explained below, a covered entity generally is required to conform pre-existing QFCs only if the covered entity or an affiliate of the covered entity enters into a new QFC with the same counterparty or a consolidated affiliate of the counterparty on or after the first compliance date.

1. Covered Entities

The final rule continues to apply to ''covered entities,'' which generally are U.S. GSIBs and their subsidiaries and the U.S. operations of foreign GSIBs. ''Subsidiary'' continues to be defined in the final rule by reference to BHC Act control. Because the FDIC and OCC are expected to finalize substantively identical final rules to that of the Board, the definition of ''covered entity'' in the final rule excludes state savings associations and state nonmember banks (FSIs), which are supervised by the FDIC, and GSIB subsidiaries (*e.g.,* national banks), U.S. branches, and U.S. agencies that are supervised by the OCC. The final rule refers to FSIs and entities supervised by the OCC (*e.g.,* national banks) that would be covered entities but for this exclusion as ''excluded banks.'' [50] As discussed below, certain other types of GSIB subsidiaries, such as merchant banking portfolio companies, are also excluded from the final rule.

2. Covered Qualified Financial Contracts

The final rule, like the proposal, defines ''qualified financial contract'' or ''QFC'' to have the same meaning as in section 210(c)(8)(D) of the Dodd-Frank Act [51] and would include, among other things, derivatives, repos, and securities lending agreements.[52] Subject to the exceptions discussed below, the final rule's requirements apply to any QFC to which a covered entity is party (covered QFC). The final rule makes clear that covered entities do not need to conform QFCs that have no transfer restrictions, direct default rights, or cross-default rights, as these QFCs have no provisions that the rule is intended to address.[53] The final rule also excludes retail investment advisory agreements and certain existing warrants.[54] It also provides the Board with authority to exempt one or more covered entities from conforming certain contracts or types of contracts to the requirements of the final rule after considering, in addition to any other factor the Board deems relevant, the burden the exemption would relieve and the potential impact of the exemption on the resolvability of the covered entity or its affiliates.[55]

The final rule also makes clear that a covered entity must conform existing

[50] *See* final rule § 252.81 for definitions of ''excluded bank'' and ''FSI.'' *See also* 12 U.S.C. 1813.

[51] 12 U.S.C. 5390(c)(8)(D).

[52] *See* final rule § 252.81; proposed rule § 252.81.

[53] *See* final rule § 252.84(a).

[54] *See* final rule § 252.88(c).

[55] *See* final rule § 252.88(d).

QFCs with a counterparty if the GSIB group (*i.e.,* the covered entity or its affiliates that are covered entities or excluded banks) enters into a new QFC with that counterparty or its affiliate, defined by reference to financial consolidation principles. In particular, the final rule provides that a covered QFC includes a QFC that the covered entity entered, executed, or otherwise became a party to before the first compliance date of this final rule if the covered entity or any affiliate that is a covered entity or excluded bank also enters, executes, or otherwise becomes a party to a QFC with the same person or a consolidated affiliate of that person on or after the first compliance date.[56] ''Consolidated affiliate'' is a defined term in the final rule that is defined by reference to financial consolidation principles.[57]

3. Required Contractual Provisions Related to the U.S. Special Resolution Regimes

Under the final rule, covered entities are required to ensure that covered QFCs include contractual terms explicitly providing that any default rights or restrictions on the transfer of the QFC are limited to the same extent as they would be pursuant to the U.S. Special Resolution Regimes.[58] However, any covered QFC that is governed under U.S. law and involves only parties (other than the covered entity) that are domiciled in, incorporated in, organized under, or whose principal place of business is located in the United States, including any state, or that is a U.S. branch or agency (U.S. counterparties) is also excluded from the requirements of the final rule relating to Title II of the Dodd-Frank Act and the FDI Act because it is sufficiently clear that the stay-and-transfer provisions of those acts would be enforceable.[59]

4. Prohibited Cross-Default Rights

Under the final rule, a covered entity is prohibited from entering into covered QFCs that would allow the exercise of cross-default rights—that is, default rights related, directly or indirectly, to the entry into resolution of an affiliate of the direct party—against it.[60] Covered entities are similarly prohibited from entering into covered QFCs that would restrict the transfer of a credit enhancement supporting the QFC from the covered entity's affiliate to a transferee upon the entry into resolution of the affiliate.[61]

The final rule does not prohibit covered entities from entering into QFCs that provide their counterparties with direct default rights against the covered entity. Under the final rule, a covered entity may be party to a QFC that, to the extent not inconsistent with Title II or the FDI Act, provides the counterparty with the right to terminate the QFC if the covered entity fails to perform its obligations under the QFC.

5. Industry-Developed Protocol

As an alternative to bringing their covered QFCs into compliance with the requirements of the final rule, the final rule allows covered entities to comply with the rule by adhering to the Universal Protocol.[62] The final rule also permits compliance with the final rule through adherence to a new protocol (the U.S. Protocol) that is the same as the existing Universal Protocol but for minor changes intended to encourage a broader range of QFC counterparties to adhere only with respect to covered entities and excluded banks. The Universal Protocol and the U.S. Protocol differ from the requirements of this final rule in certain respects. Nevertheless, as described in greater detail below, the final rule allows compliance through adherence to these protocols in light of the fact that the protocols contain certain desirable features that the final rule lacks and produce outcomes substantially similar to this final rule.

6. Process for Approval of Enhanced Creditor Protection Conditions

The final rule also allows the Board, at the request of a covered entity, to approve as compliant with the final rule covered QFCs with creditor protections other than those that would otherwise be permitted under section 252.84 of the final rule.[63] The Board could approve such a request if, in light of several enumerated considerations, the alternative approach would prevent or mitigate risks to the financial stability of the United States presented by a GSIB's failure and would protect the safety and soundness of bank holding companies and state member banks to at least the same extent as the final rule's requirements.[64]

7. Amendments to Certain Definitions in the Board's Capital and Liquidity Rules

The final rule also amends certain definitions in the Board's capital and liquidity rules to help ensure that the regulatory capital and liquidity treatment of QFCs to which a covered entity is party is not affected by the proposed restrictions on such QFCs. Specifically, the final rule amends the definition of ''qualifying master netting agreement'' in the Board's regulatory capital and liquidity rules and similarly amends the definitions of the terms ''collateral agreement,'' ''eligible margin loan,'' and ''repo-style transaction'' in the Board's regulatory capital rules.

D. Consultation With U.S. Financial Regulators, the Council, and Foreign Authorities

In developing this final rule, the Board consulted with the FDIC, the OCC, and the Financial Stability Oversight Council (Council).[65] The final rule reflects input received by the Board during this consultation process. Furthermore, the Board has consulted with, and expects to continue to consult with, foreign financial regulatory authorities regarding this final rule and the establishment of other standards that would maximize the prospects for the cooperative and orderly cross-border resolution of a failed GSIB on an international basis.[66]

The OCC is expected to finalize a rulemaking that would subject national banks, Federal savings associations, Federal branches, and Federal agencies of GSIBs to requirements substantively identical to those proposed here for covered entities. Similarly, the FDIC is expected to finalize a rulemaking that would subject state nonmember bank and state savings association subsidiaries of GSIBs to requirements substantively identical to those proposed here for covered entities. The Board has consulted with the OCC and FDIC in the development of their respective final rules. The banking agencies have endeavored to harmonize their respective rules to the extent possible and to provide specificity and clarity in the final rule to minimize the possibility of conflicting interpretations or uncertainty in their application. Moreover, the banking agencies intend to consult with each other and coordinate as needed regarding implementation of the final rule.

[56] *See* final rule § 252.82(c).

[57] *See* final rule § 252.81.

[58] *See* final rule § 252.83.

[59] *See* final rule § 252.83(a).

[60] *See* final rule § 252.84(b).

[61] *See id.*

[62] *See* final rule § 252.85(a).

[63] *See* final rule § 252.85(c).

[64] *See* final rule § 252.85(c)–(d).

[65] One commenter also requested that the Board consult with other agencies with entities under their jurisdiction affected by the final rule. Several commenters requested that the Board consult with the OCC in developing its final rule and coordinate its final rule with that of the OCC. Board staff has consulted with the Council as well as the FDIC and OCC in developing this final rule.

[66] Certain commenters also requested that the Board consult with foreign regulatory authorities in developing its final rule.

II. Restrictions on QFCs of GSIBs

A. Covered Entities (Section 252.82(b) of the Final Rule)

The proposed rule applied to ''covered entities,'' which included (a) any U.S. GSIB top-tier bank holding company, (b) any subsidiary of such a bank holding company that is not a ''covered bank,'' and (c) the U.S. operations of any foreign GSIB, with the exception of any ''covered bank.'' In the proposal, the term ''covered bank'' was defined to include certain entities, such as certain national banks, that are supervised by the OCC. Covered banks would have been exempt from the requirements of the proposal because the OCC was expected to issue a proposed rule that would impose substantively identical requirements on covered banks.[67] Commenters supported this exemption for QFCs of covered banks on the basis that these banks should not have to comply with two sets of rules.[68]

Under the proposal, covered entities included the entities identified as U.S. GSIB top-tier holding companies under the Board's GSIB surcharge rule[69] as well as all subsidiaries of U.S. GSIBs (other than covered banks, as defined in the proposal).[70] The definition of ''subsidiary'' under the proposal included any company that is owned or controlled directly or indirectly by another company, where the term ''control'' was defined by reference to the BHC Act.[71] The BHC Act definition of control includes ownership, control or the power to vote 25 percent of any class of voting securities; control in any manner of the election of a majority of the directors or trustees; or exercise of a controlling influence over the management or policies.[72]

A few commenters urged the Board not to expand the scope of covered entity to include non-GSIBs, arguing that such an expansion would exceed the Board's statutory authority under the Dodd-Frank Act. The Board is not including non-GSIBs as covered entities in its final rule.

A number of commenters urged the Board to move to a financial consolidation standard to define a ''subsidiary'' of a covered entity instead of BHC Act control.[73] These commenters argued that, under Generally Accepted Accounting Principles, a company generally would consolidate an entity in which it holds a majority voting interest or over which it has the power to direct the most significant economic activities, to the extent it also holds a variable interest in the entity. In addition, commenters pointed out that financially consolidated subsidiaries are often subject to operational control and generally fully integrated into the parent's enterprise-wide governance, policies, procedures, control frameworks, business strategies, information technology systems, and management systems. These commenters pointed out that the concept of BHC Act control was designed to serve other policy purposes (*e.g.,* separation between banking and commercial activities). A number of commenters argued that BHC Act control may include an entity that is not under the day-to-day operational control of the GSIB and over whom the GSIB does not have the practical ability to require remediation of that entity's QFCs to comply with the proposed rule. Moreover, commenters contended that entities that are not consolidated with a GSIB for financial reporting purposes are unlikely to raise the types of concerns for the orderly resolution of GSIBs targeted by the proposal. Commenters also noted that the ISDA master agreements and the Universal Protocol define ''affiliate'' by reference to ownership of a majority of the voting power of an entity or person. For these reasons, commenters urged the Board to define the term ''subsidiary'' of a covered entity based on financial consolidation under the final rule.

Commenters urged that, regardless of whether a financial consolidation standard is adopted for the purpose of defining ''subsidiary,'' the final rule should exclude from the definition of ''covered entity'' entities over which the covered entity does not exercise operational control, such as merchant banking portfolio companies, section 2(h)(2) companies, joint ventures, sponsored funds as distinct from their sponsors or investment advisors, securitization vehicles, entities in which the covered entity holds only a minority interest and does not exert a controlling influence, and subsidiaries held pursuant to provisions for debt previously contracted in good faith (DPC subsidiaries).[74] With respect to merchant banking authority, which allows a financial holding company to make a majority or minority investment in a portfolio company that is engaged in activity that is not financial in nature, certain commenters noted that section 4(k) of the BHC Act prohibits the financial holding company from routinely managing or operating the portfolio company except as may be necessary or required to obtain a reasonable return on investment upon resale or other disposition of the portfolio company.[75] Regarding sponsored funds, commenters argued that each sponsored or advised fund is a separate legal entity that is distinct from its sponsor or investment advisor regardless of whether the fund is consolidated and that the sponsor or advisor has no claim on the fund's assets and may not use the fund's assets for its benefit.

In terms of foreign GSIBs, certain commenters argued that foreign banking organization (FBO) subsidiaries for which the FBO has been given special relief by Board order not to hold the subsidiary under an intermediate holding company should not be included in the definition of covered entity, even if such entities would be consolidated under financial consolidation principles.[76] These commenters argued that, since neither the covered entity nor the foreign GSIB parent would provide credit support to these entities or name such entities in a cross-default provision in a QFC or related agreement, the failure of any of these types of entities would be unlikely to affect QFCs entered into by the covered entity or any other affiliate. These commenters further noted that the few such requests that have been granted by the Board often involved situations in which the FBO did not have sufficient operational control over the entity to ensure its compliance. Commenters also requested that U.S.

[67] Section 252.88 of the Board's proposal also clarified that covered entities would not be required to conform covered QFCs with respect to a part of a covered QFC that a covered bank also would be required to conform under the proposed rule that the OCC subsequently issued.

[68] Commenters requested further clarification on the interaction between the final rules of the Board and the OCC to avoid legal uncertainty. As noted above, the OCC and FDIC are expected to finalize rules that are substantively identical to this final rule, and the banking agencies are expected to coordinate in the interpretation of the rules. Section 252.88(b) of the final rule, which addresses potential overlap between the agencies' final rules, has been clarified in response to commenters' requests. Section 252.88(b) is discussed in more detail below.

[69] 12 CFR 217.402. *See also* 80 FR 49082 (Aug. 14, 2015).

[70] *See* proposed rule § 252.82(a)(1).

[71] *See* 12 CFR 252.2.

[72] *See* 12 U.S.C. 1841(a).

[73] Commenters generally expressed a similar view with respect to the definition of ''affiliate'' of a covered entity as the term is used in sections 252.83 and 84 of the proposed rule. That term which was similarly defined by reference to BHC Act control under the proposal.

[74] *See, e.g.,* 12 U.S.C. 1842(a)(A)(ii), 1843(c)(2); 12 CFR 225.12(b), 225.22(d)(1).

[75] 12 U.S.C. 1843(k)(4)(H)(iv); 12 CFR 225.171(a).

[76] Board orders granting requests from FBOs for such treatment can be found at Regulation YY Foreign Banking Organization Requests, *https://www.federalreserve.gov/supervisionreg/regulation-yy-foreign-banking-organization-requests.htm.*

branches and agencies of FBOs be excluded from the definition of ''covered entity'' and ''U.S. operations'' of foreign GSIBs where the foreign GSIB's home country legal framework meets the objectives of the final rule. These commenters argued that the requirements of the final rule would be duplicative of requirements on a foreign GSIB's U.S. branches and agencies if those entities' QFCs are already subject to existing and substantially equivalent resolution powers in the home country, without a proportionate incremental benefit to their resolvability or reduction in risk to U.S. financial stability.[77]

Under the final rule, a ''covered entity'' is generally (a) any U.S. GSIB top-tier bank holding company; (b) any subsidiary of such a company that is not a national bank, Federal savings association, Federal branch, Federal agency, or FSI; and (c) the U.S. operations of any foreign GSIB that is not a national bank, Federal savings association, Federal branch, Federal agency, or FSI, with certain specified exceptions.[78] ''FSI'' is defined to include state nonmember banks and state savings associations, which are supervised by the FDIC.[79] National banks, Federal savings associations, Federal branches, Federal agencies, and FSIs that are exempt from the final rule are ''excluded banks'' under the final rule.[80] Excluded banks are exempt from the requirements of this final rule because the OCC and FDIC are expected to issue final rules that would impose substantively identical requirements on excluded banks in the near future.[81]

U.S. GSIB bank holding companies. As in the proposal, covered entities include the entities identified as U.S. GSIB top-tier holding companies under the Board's GSIB surcharge rule.[82] Under the GSIB surcharge rule, a U.S. top-tier bank holding company subject to the advanced approaches rule [83] must determine whether it is a GSIB by applying a multifactor methodology established by the Board.[84] The methodology evaluates a banking organization's systemic importance on the basis of its attributes in five broad categories: Size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity.[85]

Accordingly, the methodology provides a tool for identifying those banking organizations whose failure or material distress would pose especially large risks to the financial stability of the United States. Improving the orderly resolution and resolvability of such firms, including by reducing risks associated with their QFCs, would be an important step toward achieving the goals of the Dodd-Frank Act. The final rule's focus on GSIBs is also in keeping with the Dodd-Frank Act's mandate that more stringent prudential standards be applied to the most systemically important bank holding companies.[86] Moreover, several of the attributes that feed into the determination of whether a given firm is a GSIB incorporate aspects of the firm's QFC activity. These attributes include the firm's total exposures, its intra-financial system assets and liabilities, its notional amount of over-the-counter derivatives, and its cross-jurisdictional claims and liabilities.

Under the GSIB surcharge rule's methodology, there are currently eight U.S. GSIBs: Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., Goldman Sachs Group, Inc., JPMorgan Chase & Co., Morgan Stanley Inc., State Street Corporation, and Wells Fargo & Company. This list may change in the future in light of changes to the relevant attributes of the current U.S. GSIBs and of other large U.S. bank holding companies.

U.S. GSIB subsidiaries. Covered entities also include all subsidiaries of the U.S. GSIBs (other than excluded banks and the exceptions described below).[87] U.S. GSIBs generally enter into QFCs through subsidiary legal entities rather than through the top-tier holding company.[88] Therefore, in order to increase GSIB resilience and resolvability by addressing the potential obstacles to orderly resolution posed by QFCs, it is necessary to apply the restrictions to the U.S. GSIBs' subsidiaries. In particular, to facilitate the resolution of a GSIB under an SPOE strategy, in which only the top-tier holding company would enter a resolution proceeding while its subsidiaries would continue to meet their financial obligations, or an MPOE strategy where an affiliate of an entity that is otherwise performing under a QFC enters resolution, it is necessary to ensure that those subsidiaries or affiliates do not enter into QFCs that contain cross-default rights that the counterparty could exercise based on the holding company's or an affiliate's entry into resolution (or that any such cross-default rights are stayed when the holding company enters resolution). Moreover, including U.S. and non-U.S. entities of a U.S. GSIB as covered entities should help ensure that such cross-default rights do not affect the ability of performing and solvent entities of a GSIB—regardless of jurisdiction—to remain outside of resolution proceedings.

''Subsidiary'' in the final rule continues to be defined by reference to BHC Act control, as does the definition of ''affiliate.'' [89] The final rule does not define covered entities to include only those subsidiaries of GSIBs that are financially consolidated, as requested by certain commenters. Defining ''subsidiary'' and ''affiliate'' by reference to BHC Act control is consistent with the definitions of those terms in the FDI Act and Title II of the Dodd-Frank Act. Specifically, Title II permits the FDIC, as receiver of a covered financial company or as receiver for its subsidiary, to enforce QFCs and other contracts of subsidiaries and affiliates, defined by reference to the BHC Act, notwithstanding cross-default rights based solely on the insolvency, financial condition, or receivership of the covered financial company.[90] Therefore, maintaining consistent definitions of subsidiary and affiliate with Title II should better ensure that QFC stays may be effected in resolution under a U.S. Special Resolution Regime. As covered entities are subject to the activity

[77] In the alternative, these commenters requested that the requirements only apply to U.S. branches of foreign GSIBs insofar as the home resolution regime and group resolution strategy would not adequately ensure that early termination rights, including cross-default rights against the U.S. IHC or subsidiaries, will not be triggered in resolution.

[78] *See* final rule § 252.82(b).

[79] The terms ''state non-member bank'' and ''state savings association'' are defined in the final rule by reference to section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813. *See* final rule § 252.81.

[80] *See* final rule § 252.81. However, excluded banks do not include subsidiaries of a GSIB that are DPC subsidiaries or portfolio companies owned under the Small Business Investment Act of 1956, or public welfare investments.

[81] Section 252.88(b) of the final rule, like the proposal, clarifies that covered entities are not required to conform covered QFCs with respect to a part of a covered QFC that an excluded bank also would be required to conform under the final rules that the OCC and FDIC are expected to issue. Such overlap could occur, for example, where a bank holding company that is a covered entity provides, as part of a master agreement governing swaps, a guaranty for a swap between a subsidiary that is an excluded bank and the excluded bank's counterparty. *See also* 12 U.S.C 5390(c)(8)(D)(vi)(V), (viii). As requested by commenters, this provision in the final rule has been revised to further clarify its application.

[82] *See* final rule § 252.82(b)(1); 12 CFR 217.402.

[83] 12 CFR part 217, subpart E.

[84] 12 CFR 217.402, 217.404.

[85] 12 CFR 217.404.

[86] 12 U.S.C. 5365(a)(1)(B).

[87] *See* final rule § 252.82(b)(2).

[88] Under the clean holding company component of the Board's recent TLAC final rule, the top-tier holding companies of U.S. GSIBs would be prohibited from entering into direct QFCs with third parties. *See* 82 FR 8266, 8298 (Jan. 24, 2017).

[89] *See* 12 CFR 252.2.

[90] 12 U.S.C. 5390(c)(16).

restrictions and other requirements of the BHC Act, they should already know all of their BHC Act-controlled subsidiaries and be familiar with BHC Act control principles.[91] Moreover, GSIBs should be able to rely on governance rights and other negotiated mechanisms to ensure that such subsidiaries conform their QFCs to the final rule's requirements.

The final rule excludes from the scope of covered entity DPC subsidiaries and merchant banking portfolio companies, as requested by certain commenters. The final rule also excludes portfolio companies held under section 4(k)(4)(I) of the BHC Act, which is an investment authority for insurance companies that is similar to merchant banking authority; portfolio companies held under the Small Business Investment Act of 1956; and certain companies engaged in the business of making public welfare investments.[92] In general, subsidiaries held under these authorities are temporary, and there are legal restrictions and other limitations on the involvement of the GSIB in the operations of these kinds of subsidiaries. Moreover, it is unlikely that the resolution of a GSIB would cause the disorderly unwind of the QFCs of these subsidiaries in a manner that would impair the orderly resolution of the GSIB. Therefore, the impact of these exclusions should be relatively small while responding to commenter concerns and reducing burden.

U.S. operations of foreign GSIBs. Finally, covered entities include almost all U.S. operations of foreign GSIBs—their U.S. subsidiaries, U.S. branches, and U.S. agencies that are not national banks, Federal savings associations, Federal branches, Federal agencies, or FSIs. The term ''global systemically important foreign banking organization'' (which this preamble shortens to ''foreign GSIB'') is defined to include any FBO that it or the Board determines has the characteristics of a GSIB under the methodology for identifying GSIBs adopted by the Basel Committee on Banking Supervision (global methodology).[93] Foreign GSIB also is defined to include a foreign banking organization or U.S. intermediate holding company required to be formed by the Board's Regulation YY (IHC) that the Board determines would be designated as a GSIB under the Board's GSIB surcharge rule if the entity were subject to the rule.[94]

As discussed above, the Board's GSIB surcharge rule identifies the most systemically important banking organizations on the basis of their attributes in the categories of size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity. While the GSIB surcharge rule applies only to U.S. bank holding companies, its methodology is equally well-suited to evaluating the systemic importance of foreign banking organizations. The global methodology generally evaluates the same attributes and would identify the same set of GSIBs as the Board's methodology. Moreover, the use of the GSIB surcharge rule to identify both foreign GSIBs and U.S. GSIBs promotes a level playing field between U.S. and foreign banking organizations.

The proposal would have required a top-tier foreign banking organization that is, or controls, a covered company under the Board's resolution plan rule (Regulation QQ) to submit by January 1 of each calendar year a notice of whether its home country supervisor (or other appropriate home country authority) has adopted standards consistent with the global methodology; whether the foreign banking organization prepares or reports the indicators used by the global methodology to identify GSIBs; and, if it does, whether the foreign banking organization has determined that it has the characteristics of a GSIB.[95] In order to reduce burden, the notice requirement of the final rule only applies to foreign banking organizations that determine that they have the characteristics of a GSIB.[96] The first notice required under this provision of the final rule is due January 1, 2018.[97]

As with U.S. GSIBs, the final rule's focus on those foreign banking organizations that qualify as GSIBs is in keeping with the Dodd-Frank Act's mandate that more stringent prudential standards be applied to the most systemically important banking organizations.[98] The final rule, like the proposal, covers only the U.S. operations of foreign GSIBs. Like the proposal, the final rule excludes section 2(h)(2) companies[99] and DPC branch

[91] For example, a covered entity may own more than 5 percent (and less than 25 percent) of the voting shares of a registered investment company for which the covered entity provides investment advisory, administrative, and other services, and has a number of director and officer interlocks, without controlling the fund for purposes of the BHC Act. *See* letter to H. Rodgin Cohen, Esq., Sullivan & Cromwell (First Union Corp.), from Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System (June 24, 1999) (finding that a bank holding company does not control a mutual fund for which it provides investment advisory and other services and that complies with the limitations of section 4(c)(7) of the BHC Act (12 U.S.C. 1843(c)(7)), so long as (i) the bank holding company reduces its interest in the fund to less than 25 percent of the fund's voting shares after a six-month period, and (ii) a majority of the fund's directors are independent of the bank holding company and the bank holding company cannot select a majority of the board); *see also* 12 CFR 225.86(b)(3) (authorizing a financial holding company to organize, sponsor, and manage a mutual fund so long as (i) the fund does not exercise managerial control over the entities in which the fund invests, and (ii) the financial holding company reduces its ownership in the fund, if any, to less than 25 percent of the equity of the fund within one year of sponsoring the fund or such additional period as the Board permits).

[92] *See* final rule § 252.82(b).

[93] *See* final rule § 252.87(a). The Basel Committee on Banking Supervision (BCBS) is a committee of bank supervisory authorities established by the central bank governors of the Group of Ten countries in 1975. The committee's membership consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. In 2011, the BCBS adopted the global methodology to identify global systemically important banking organizations and assess their systemic importance. *See* ''Global systemically important banks: Assessment methodology and the additional loss absorbency requirement,'' (Nov. 2011), *http://www.bis.org/publ/bcbs207.htm.* In 2013, the BCBS published a revised document, which provides certain revisions and clarifications to the global methodology. *See* ''Global systemically important banks: Updated assessment methodology and the higher loss absorbency requirement,'' (July 2013), *http://www.bis.org/publ/bcbs255.htm.*

In November 2016, the FSB and the BCBS published an updated list of banking organizations that are GSIBs under the assessment methodology. The list includes the eight U.S. GSIBs and the following 22 foreign banking organizations: Agricultural Bank of China, Bank of China, Barclays, BNP Paribas, China Construction Bank, Credit Suisse, Deutsche Bank, Groupe BPCE, Groupe Crédit Agricole, Industrial and Commercial Bank of China Limited, HSBC, ING Bank, Mitsubishi UFJ FG, Mizuho FG, Nordea, Royal Bank of Scotland, Santander, Société Générale, Standard Chartered, Sumitomo Mitsui FG, UBS, and Unicredit Group. *See* FSB, ''2016 update of list of global systemically important banks'' (November 21, 2016), *http://www.fsb.org/wp-content/uploads/2016-list-of-global-systemically-important-banks-G-SIBs.pdf.*

[94] *See* final rule § 252.87(a).

[95] *See* proposed rule § 252.87(b).

[96] *See* final rule § 252.87(b). Like the proposal, the final rule requires top-tier foreign banking organizations that are or control covered companies under Regulation QQ and that prepare or report the indicator amounts necessary to determine whether the organization is a GSIB to use the data to determine whether the organization has the characteristics of a GSIB. *See id.* at § 252.87(c).

[97] The final rule makes clear that foreign banking organizations that are subject to similar notice and determination requirements under the Board's TLAC rule (12 CFR 252.153(b)(5)–(b)(6)) may comply with the final rule by complying with the similar requirements in the Board's TLAC rule. *See id.* at § 252.87(d).

[98] 12 U.S.C. 5365(a)(1)(B).

[99] Section 2(h)(2) of the BHC Act provides that the activity and ownership restrictions of section 4 of the BHC Act do not apply to shares of any company organized under the laws of a foreign country (or to shares held by such company in any company engaged in the same general line of business as the investor company or in a business related to the

Continued

subsidiaries, which are also types of entities excluded by regulation from being held under an IHC.[100] To provide the same treatment for foreign GSIBs and U.S. GSIBs, the final rule also excludes DPC subsidiaries, merchant banking portfolio companies, portfolio companies held under section 4(k)(4)(I) of the BHC Act, portfolio companies held under the Small Business Investment Act of 1956, and public welfare investments of foreign GSIBs.[101]

The final rule does not exempt U.S. branches and agencies of foreign GSIBs or U.S. subsidiaries of foreign GSIBs that are not held under an IHC pursuant to a Board order, as requested by certain commenters. The exemptions by Board order were provided in the context of another rule, and the same considerations do not apply in the context of this final rule as these subsidiaries could impact the resolvability of the U.S. operations of a foreign GSIB.[102] As with the coverage of subsidiaries of U.S. GSIBs, coverage of the U.S. operations of foreign GSIBs will enhance the prospects for an orderly resolution of the foreign GSIB and its U.S. operations. In particular, covering QFCs that involve any U.S. subsidiary, U.S. branch, or U.S. agency of a foreign GSIB will reduce the potentially disruptive cancellation of those QFCs if the foreign GSIB or any of its subsidiaries enters resolution, including resolution under the U.S. Bankruptcy Code or the U.S. Special Resolution Regimes.[103]

B. Covered QFCs (Section 252.82(c) of the Final Rule)

General definition. The proposal applied to any ''covered QFC,'' generally defined as any QFC that a covered entity enters into, executes, or otherwise becomes party to with the person or an affiliate of the same person.[104] Under the proposal, ''qualified financial contract'' or ''QFC'' was defined as in section 210(c)(8)(D) of Title II of the Dodd-Frank Act and included swaps, repo and reverse repo transactions, securities lending and borrowing transactions, commodity contracts, and forward agreements.[105]

The application of the rule's requirements to a ''covered QFC'' was one of the most commented upon aspects of the proposal. Certain commenters argued that the definition of QFC in Title II of the Dodd-Frank Act was overly broad and imprecise and could include agreements that market participants may not expect to be subject to the stay-and-transfer provisions of the U.S. Special Resolution Regimes. More generally, commenters argued that the proposed definition of QFC was too broad and would capture contracts that do not present any obstacles to an orderly resolution. Commenters urged the Board to exclude a variety of types of QFCs from the requirements of the final rule. In particular, a number of commenters urged the Board to exclude QFCs that do not contain any transfer restrictions or default rights, because these types of QFCs do not give rise to the risk that counterparties will exercise their contractual rights in a manner that is inconsistent with the provisions of the U.S. Special Resolution Regimes. Commenters named several examples of contracts that fall into this category, including cash market securities transactions, certain spot FX transactions (including securities conversion transactions), retail brokerage agreements, retirement/IRA account agreements, margin agreements, options agreements, FX forward master agreements, and delivery versus payment client agreements. Commenters contended that these types of QFCs number in the millions at some firms and that remediating these contracts to include the express provisions required by the final rule would require an enormous client outreach effort that would be extremely burdensome and costly while providing no meaningful resolution benefits. For example, commenters pointed out that for certain types of transaction, such as cash securities transactions, FX spot transactions, and retail QFCs, such a requirement could require an overhaul of existing market practice and documentation that affects hundreds of thousands, if not millions, of transactions occurring on a daily basis and significant education of the general market.

Commenters also urged the Board to exclude QFCs that do not contain any default or cross-default rights but that may contain transfer restrictions. Commenters contended that examples of these types of agreements included investment advisory account agreements with retail customers, which contain transfer restrictions as required by section 205(a)(2) of the Investment Advisers Act of 1940, but no direct default or cross-default rights; underwriting agreements;[106] and client onboarding agreements. A few commenters provided prime brokerage or margin loan agreements as examples of transactions that generally do not have default or cross-default rights but may have transfer restrictions. Another commenter also requested the exclusion of securities market transactions that generally settle in the short term, do not impose ongoing or continuing obligations on either party after settlement, and do not typically include default rights.[107] In these cases, commenters contended that remediation of these agreements would be burdensome with no meaningful resolution benefits.

Commenters also argued for the exclusion of a number of other types of contracts from the definition of covered QFC in the final rule. In particular, a number of commenters urged the Board to exclude contracts issued in the capital markets or related to a capital market issuance, like warrants or a certificate representing a call option, typically on a security or a basket of securities. Although warrants issued in capital markets may contain direct default and cross-default rights as well as transfer restrictions, commenters argued that remediation of outstanding warrant agreements would be difficult, if not impossible, since remediation would require the affirmative vote of a substantial number of separate voting groups of holders to amend the terms of the instruments and that obtaining such consent could be expensive due to ''hold-out'' premiums. Commenters also

business of the investor company) that is principally engaged in business outside the United States if such shares are held or acquired by a bank holding company organized under the laws of a foreign country that is principally engaged in the banking business outside the United States. 12 U.S.C. 1841(h)(2). As with the similar exclusion to the Board's U.S. IHC requirement (12 CFR 252.153(b)(1)), the Board has taken into account the nonfinancial activities and affiliations of a foreign banking organization in permitting the exclusion for section 2(h)(2) companies from the final rule. *Cf.* 79 FR 17240 (Mar. 27, 2014).

[100] 12 CFR 252.2(j) and (x).

[101] *See* final rule § 252.82(b)(3).

[102] *See* 12 CFR 252.153(c)(1)–(2).

[103] The laws and regulations imposed in non-U.S. jurisdictions that commenters noted were similar to the requirements of the proposed rule do not address resolution under U.S. insolvency or the U.S. Special Resolution Regimes.

[104] *See* proposed rule § 252.83(a). For convenience, this preamble generally refers to ''a covered entity's QFCs'' or ''QFCs to which a covered entity is party'' as shorthand to encompass the definition of ''covered QFC.''

[105] *See* proposed rule § 252.81. *See also* 12 U.S.C. 5390(c)(8)(D).

[106] However, certain commenters noted that underwriting, purchase, subscription, or placement agency agreements may contain rights that could be construed as cross-default rights or default rights.

[107] In the alternative, the commenter requested that such securities market transactions be excluded to the extent they are cleared, processed, and settled through (or subject to the rules of) FMUs through expansion of the proposed exemption for transactions with central counterparties. This aspect of the comment is addressed in the subsequent section discussing requests for expansion of the proposed exemption for transactions with central counterparties.

argued that since these instruments are traded in the markets, it is not possible for an issuer to ascertain whether a particular investor in such instruments has also entered into other QFCs with the dealer or any of its affiliates (or vice versa) for purposes of complying with the proposed mechanism for remediation of existing QFCs. Commenters argued that issuers would be able to comply if the final rule's requirements applied only on a prospective basis with respect to new issuances, since new investors could be informed of the terms of the warrant at the time of purchase and no after-the-fact consent would be required, as is the case with existing outstanding warrants. Commenters expressed the view that prospective application of the final rule's requirements to warrants would allow time for firms to develop new warrant agreements and warrant certificates, to engage in client outreach efforts, and to make any appropriate public disclosures. Commenters suggested that the requirements of the final rule should only apply to such instruments issued after the effective date of the final rule and that the compliance period for such new issuances be extended to allow time to establish new issuance programs that comply with the final rule's requirements. Other examples of contracts in this category given by commenters include contracts with special purpose vehicles that are multi-issuance note platforms, which commenters urged would be difficult to remediate for similar reasons to warrants other than on a prospective basis.

Commenters also urged the exclusion of contracts for the purchase of commodities in the ordinary course of business (*e.g.,* utility and gas energy supply contracts) or physical delivery commodity contracts more broadly.[108] In general, commenters argued that exempting these contracts would not increase systemic risk but would help ensure the smooth operation of utilities and the physical commodities markets.[109] Commenters indicated that failure to make commodity deliveries on time can result in the accrual of damages and penalties beyond the accrual of interest (*e.g.,* demurrage and other fines in shipping) and that counterparties may not be able to obtain appropriate compensation for amendment of default rights due to the difficulty of pricing the risk associated with an operational failure due to the failure to deliver a commodity on time. Commenters also contended that agreements with power operators governed by regulatory tariffs would be difficult, if not impossible, to remediate.[110]

The final rule applies to any ''covered QFC,'' which generally is defined as any ''in-scope QFC'' that a covered entity enters into, executes, or to which the covered entity otherwise becomes a party.[111] As under the proposal, ''qualified financial contract'' or ''QFC'' is defined in the final rule as in section 210(c)(8)(D) of Title II of the Dodd-Frank Act and includes swaps, repo and reverse repo transactions, securities lending and borrowing transactions, commodity contracts, and forward agreements.[112] Parties that enter into contracts with covered entities have been potentially subject to the stay-and-transfer provisions of Title II of the Dodd-Frank Act since its enactment. Consistent with Title II, the final rule does not exempt QFCs involving physical commodities. However, as explained below, the final rule responds to concerns regarding the smooth operation of physical commodities end users and markets by allowing counterparties to terminate QFCs based on the failure to pay or perform.

In response to concerns raised by commenters, the final rule exempts QFCs that have no transfer restrictions or default rights, as these QFCs have no provisions that the rule is intended to address. The final rule effects this exemption by limiting the scope of QFCs potentially subject to the rule to those QFCs that explicitly restrict the transfer of a QFC from a covered entity or explicitly provide default rights that may be exercised against a covered entity (in-scope QFCs).[113] This change addresses a major concern raised by commenters regarding the overbreadth of the definition of ''covered QFC'' in the proposal. The change also mitigates the burden of complying with the proposed rule without undermining its purpose by not requiring covered entities to conform contracts that do not contain the types of default rights and transfer restrictions that the final rule is intended to address. The Board has declined, however, to exclude QFCs that have transfer restrictions (but no default rights or cross-default rights), as requested by certain commenters, as such QFCs would have provisions (*i.e.,* transfer restrictions) that are subject to the requirements of the final rule and could otherwise impede the orderly resolution of a covered entity or its affiliate.

The final rule provides that a covered entity is not required to conform certain investment advisory contracts described by commenters (*i.e.,* investment advisory contracts with retail advisory customers[114] of the covered entity that only contain the transfer restrictions required by section 205(a) of the Investment Advisers Act). The final rule also exempts existing warrants evidencing a right to subscribe or to

[108] For example, some commenters urged the exclusion of all contracts requiring physical delivery between commercial entities in the course of regulatory business such as (i) contracts subject to a Federal Energy Regulatory Commission-filed tariff; (ii) contracts that are traded in markets overseen by independent system operators or regional transmission operators; (iii) retail electric contracts; (iv) contracts for storage or transportation of commodities; (v) contracts for financial services with regulated financial entities (*e.g.,* brokerage agreements and futures account agreements); and (vi) public utility contracts.

[109] One commenter also argued that utility and gas supply contracts are covered sufficiently in section 366 of the U.S. Bankruptcy Code. This section of the U.S. Bankruptcy Code places restrictions on the ability of a utility to ''alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under [the U.S. Bankruptcy Code] or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.'' 11 U.S.C. 366. The purpose and effect of section 252.84 of the final rule and section 366 of the U.S. Bankruptcy Code are different and therefore do not serve as substitutes. Section 366 of the U.S. Bankruptcy Code does not address cross-defaults or provide additional clarity regarding the application of the U.S. Special Resolution Regimes. Similarly, section 252.84 of the final rule does not prevent a covered entity from entering into a covered QFC that allows the counterparty to exercise default rights once a covered entity that is a direct party either enters bankruptcy or fails to pay or perform under the QFC.

[110] One commenter also requested exclusion of overnight transactions, particularly overnight repurchase agreements, arguing that such transactions present little risk of creating negative liquidity effects and that an express exclusion for such transactions may increase the likelihood that such contracts would remain viable funding sources in times of liquidity stress. Although the final rule does not exempt overnight repo transactions, the final rule may have limited if any effect on such transactions. As described below, the final rule provides a number of exemptions that may apply to overnight repo and similar transactions. Moreover, the restrictions on default rights in section 252.84 of the final rule do not apply to any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause. *See* final rule § 252.81 (defining ''default right''). Therefore, section 252.84 does not restrict the ability of QFCs, including overnight repos, to terminate at the end of the term of the contract.

[111] *See* final rule § 252.82(c).

[112] *See* final rule § 252.81. *See also* 12 U.S.C. 5390(c)(8)(D).

[113] *See* final rule § 252.82(d).

[114] *See* final rule § 252.88(c)(1). The final rule defines retail customer or counterparty by reference to the Board's Regulation WW. *See* 12 CFR 249.3; *see also* FR 2052a, *https://www.federalreserve.gov/reportforms/forms/FR_2052a20161231_f.pdf.* Covered entities should be familiar with this definition and its application.

otherwise acquire a security of a covered entity or its affiliate.[115] The Board has determined to exclude these types of agreements since there is persuasive evidence that these types of contracts would be burdensome to conform and that it is unlikely that excluding such contracts from the requirements of the final rule would impair the orderly resolution of a GSIB.[116]

The final rule also provides the Board with authority to exempt one or more covered entities from conforming certain contracts or types of contracts to the final rule after considering, in addition to any other factor the Board deems relevant, the burden the exemption would relieve and the potential impact of the exemption on the resolvability of the covered entity or its affiliates.[117] Covered entities that request that the Board exempt additional contracts from the final rule should be prepared to provide information in support of their requests. The Board expects to consult as appropriate with the FDIC and OCC during its consideration of any such request.

Definition of counterparty. As noted above, the proposal applied to any ''covered QFC,'' generally defined as a QFC that a covered entity enters after the effective date and a QFC entered earlier, but only if the covered entity or its affiliate enters a new QFC with the same person or an affiliate of the same person.[118] ''Affiliate'' in the proposal was defined in the same manner as under the BHC Act to mean any company that controls, is controlled by, or is under common control with another company.[119] As noted above, ''control'' under the BHC Act means the power to vote 25 percent or more of any class of voting securities; control in any manner the election of a majority of the directors or trustees; or exercise of a controlling influence over the management or policies.[120]

Commenters argued that requiring remediation of existing QFCs of a person if the GSIB entered into a new QFC with an affiliate of the person would make compliance with the proposed rule overly burdensome.[121] These arguments were similar to commenters' arguments regarding the definition of ''subsidiary'' of a covered entity, which were discussed above. Commenters pointed out that this requirement would demand that the GSIB track each counterparty's organizational structure by relying on information provided by counterparties, which would subject counterparties to enhanced tracking and reporting burdens. Commenters requested that the phrase ''or affiliate of the same person'' be deleted from the definition of covered QFC and argued that such a modification would not undermine the ultimate goals of the rule since existing QFCs with the counterparty's affiliate would still have be remediated if the covered entity or its affiliate enters into a new QFC with that counterparty affiliate. In the alternative, commenters argued that an affiliate of a counterparty be established by reference to financial consolidation principles rather than BHC Act control, since counterparties may not be familiar with BHC Act control. Commenters argued that many counterparties are not regulated bank holding companies and would be unfamiliar with BHC Act control. Certain commenters also argued that a new QFC with one fund in a fund family should not result in other funds in the fund family being required to conform their pre-existing QFCs with the covered entity or an affiliate.

The final rule's definition of ''covered QFC'' has been modified to address the concerns raised by commenters. In particular, the final rule provides that a covered QFC includes a QFC that the covered entity entered, executed, or otherwise became a party to before January 1, 2019, if the covered entity or any affiliate that is a covered entity or excluded bank also enters, executes, or otherwise becomes a party to a QFC with the same person or a consolidated affiliate of the same person on or after January 1, 2019.[122] The final rule defines ''consolidated affiliate'' by reference to financial consolidation principles.[123] As commenters pointed out, counterparties will already track and monitor financially consolidated affiliates. Moreover, exposures to a non-consolidated affiliate may be captured as a separate counterparty (*e.g.,* when the non-consolidated affiliate enters a new QFC with the covered entity). As a consequence, modifying the coverage of affiliates in this manner addresses concerns raised by commenters regarding burden while still providing sufficient incentives to remediate existing covered QFCs.

The definition of ''covered QFC'' is intended to limit the restrictions of the final rule to those financial transactions whose disorderly unwind has substantial potential to frustrate the orderly resolution of a GSIB, as discussed above. By adopting the Dodd-Frank Act's definition of QFC, with the modifications described above, the final rule generally extends stay-and-transfer protections to the same types of transactions as Title II of the Dodd-Frank Act. In this way, the final rule enhances the prospects for an orderly resolution in bankruptcy and under the U.S. Special Resolution Regimes.

Exclusion of cleared QFCs. The proposal excluded from the definition of ''covered QFC'' all QFCs that are cleared through a central counterparty (CCP).[124] Commenters generally expressed support for this exclusion, but some commenters requested that the Board broaden this exclusion in the final rule. In particular, a number of commenters urged the Board to exclude the ''client-facing leg'' of a cleared swap where a clearing member faces a CCP on one leg of the transaction and faces the client on an otherwise identical offsetting transaction.[125] One commenter

[115] *See* final rule § 252.88(c)(2). Warrants issued after the effective date of the final rule are not excluded from the requirements of the final rule.

[116] These exemptions are not interpretations of the definition of QFC.

[117] *See* final rule § 252.88(d).

[118] *See* proposed rule §§ 252.83(a), 225.84(a).

[119] *See* 12 CFR 252.2 (defining ''affiliate'').

[120] *See* 12 U.S.C. 1841(k).

[121] One commenter believed that the burden of conforming contracts with all affiliates of a counterparty would be too great, whether defined in terms of BHC Act control or financial consolidation principles, even though the burden would be reduced by definition in terms of financial consolidation principles.

[122] *See* final rule § 252.82(c).

[123] *See* final rule § 252.81.

[124] *See* proposed rule § 252.88(a).

[125] Commenters argued that, in the European-style principal-to-principal clearing model, the clearing member faces the CCP on one swap (the ''CCP-facing leg''), and the clearing member, frequently a covered entity, faces the client on an otherwise identical, offsetting swap (the ''client-facing leg''). Under the proposed rule, only the CCP-facing leg of the transaction was excluded, even though the client-facing leg is necessary to the mechanics of clearing and is only entered into by the clearing member to effectuate the cleared transaction. Commenters argued that the proposed rule thus treated two pieces of the same transaction differently, which could result in an imbalance in insolvency or resolution and that the possibility of such an imbalance for the clearing member could expose the clearing member to unnecessary and undesired market risk. Commenters urged the Board to adopt the same approach taken under Section 2 of the Universal Protocol, which allows the client-facing leg of the cleared swap with the clearing member that is a covered entity to be closed out substantially contemporaneously with the CCP-facing leg in the event the CCP were to take action to close out the CCP-facing leg.

Some commenters requested clarification that transactions between a covered entity client and its clearing member (as opposed to transactions where the covered entity is the clearing member) would be subject to the rule's requirements, since this would be consistent with the Universal Protocol. As explained in this section, the exemption in the final rule regarding CCPs does not depend on whether the covered entity is a clearing member or a client. A covered QFC—generally a QFC to which a covered entity is a party—is exempted from the requirements of the final rule if a CCP is also a party.

requested the Board confirm its understanding that ''FCM agreements,'' which the commenter defined as futures and cleared swaps agreements with a futures commission merchant, are excluded because FCM agreements ''are only QFCs to the extent that they relate to futures and swaps and, since futures and cleared swaps are excluded, the FCM Agreements are also excluded.'' [126] The commenter requested, in the alternative, that the final rule expressly exclude such agreements.

A few commenters requested that the Board modify the definition of ''central counterparty,'' which was defined to mean ''a counterparty (for example, a clearing house) that facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating trades'' in the proposal.[127] These commenters argued that a CCP does far more than ''facilitate'' or ''guarantee'' trades and that a CCP ''interposes itself between counterparties to contacts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts.'' [128] As an alternative definition of CCP, these commenters suggested the final rule should define central counterparty to mean: ''an entity (for example, a clearinghouse or similar facility, system, or organization) that, with respect to an agreement, contract, or transaction: (i) Enables each party to the agreement contract, or transaction to substitute, through novation or otherwise, the credit of the CCP for the credit of the parties; and (ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the CCP.'' [129]

Commenters also urged the Board to exclude from the requirements of the final rule all QFCs that are cleared, processed, or settled through the facilities of an FMU, as defined in section 803(6) of the Dodd-Frank Act,[130] or that are entered into subject to the rules of an FMU.[131] For example, commenters argued that QFCs with FMUs, such as the provision of an extension of credit by a central securities depository (CSD) to a covered entity that is a member of the CSD in connection with the settlement of securities transactions, should be excluded from the requirements of the final rule. Commenters contended that, similar to CCPs, the relationship between a covered entity and FMU is governed by the rules of the FMU and that there are no market alternatives to continuing to transact with FMUs. Commenters argued that FMUs generally should be excluded for the same reasons as CCPs and that a broader exemption to cover FMUs would serve to mitigate the systemic risk of a GSIB in distress, an underlying objective of the rule's requirements. Commenters contended that such an exclusion would be consistent with the treatment of FMUs under U.K. regulations and German law. Some commenters also requested that related or underlying agreements to CCP-cleared QFCs and QFCs entered into with other FMUs also be excluded, since such agreements ''form an integrated whole with [those] QFCs'' and such an exemption would facilitate the continued expansion of the clearing and settlement framework and the benefits of such a framework.[132] One commenter urged that the final rule should not in any manner restrict an FMU's ability to close out a defaulting clearing member's portfolio, including potential liquidation of cleared contracts.

The issues that the final rule is intended to address with respect to non-cleared QFCs may also exist in the context of centrally cleared QFCs. However, clearing through a CCP provides unique benefits to the financial system while presenting unique issues related to the cancellation of cleared contracts. Accordingly, the Board continues to believe it is appropriate to exclude centrally cleared QFCs, in light of differences between cleared and non-cleared QFCs with respect to contractual arrangements, counterparty credit risk, default management, and supervision. The Board has not extended the exclusion for CCPs to the client-facing leg of a cleared transaction because bilateral trades between a GSIB and a non-CCP counterparty are the types of transactions that the final rule intends to address and because nothing in the final rule would prohibit a covered entity clearing member and a client from agreeing to terminate or novate a trade to balance the clearing member's exposure. The final rule continues to define central counterparty as a counterparty that facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating trades, which is a broad definition that should be familiar to market participants as it is used in the regulatory capital rules.[133]

The final rule also makes clear that, if one or more FMUs are the only counterparties to a covered QFC, the covered entity is not required to conform the covered QFC to the final rule.[134] Therefore, an FMU's default rights and transfer restrictions under the covered QFC are not affected by the final rule. However, this exclusion would not include a covered QFC with a non-FMU counterparty, even if the QFC is settled by an FMU or if the FMU is a party to such QFC, because the final rule is intended to address default rights of non-FMU parties. For example, if two covered entities engage in a bilateral QFC that is facilitated by an FMU and, in the course of this facilitation each covered entity maintains a QFC solely with the FMU, then the final rule would not apply to each QFC between the FMU and each covered entity but the requirements of the final rule *would* apply to the bilateral QFC between the two covered entities. This approach ensures that QFCs that are directly with FMUs are treated in a manner similar to transactions between covered entities and CCPs, but also ensures that QFCs conducted by covered entities that are related to the direct QFC with the FMU

[126] Letter to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, from James M. Cain, Sutherland Asbill & Brennan LLP, writing on behalf of the eleven Federal Home Loan Banks, at 2 (Aug. 5, 2016).

[127] 12 CFR 217.2.

[128] Letter to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, from Walt L. Lukken, President and CEO, Futures Industry Association, at 8–9 (Aug. 5, 2016) (citing Principles of Financial Market Infrastructures (Apr. 2012), published by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions, at 9).

[129] *Id.* at 9.

[130] 12 U.S.C. 5462(6). In general, Title VIII of the Dodd-Frank Act defines ''financial market utility'' to mean any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person. *Id.*

[131] As discussed above, one commenter who recommended an exclusion of securities market transactions that generally settle in the short term, do not impose ongoing or continuing obligations on either party after settlement, and do not typically include the default rights targeted by this rule, requested this treatment in the alternative.

[132] Letter to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, from Larry E. Thompson, Vice Chairman and General Counsel, The Depository Trust & Clearing Corporation, at 6 (Aug. 5, 2016).

[133] *See* final rule § 252.81. *See also* 12 CFR 217.2.

[134] *See* final rule § 252.88(a)(2). In response to commenters, the final rule uses the definition of FMU in Title VIII of the Dodd-Frank Act and may apply, for purposes of the final rule, to entities regardless of jurisdiction. The definition of FMU in the final rule includes a broader set of entities, in addition to CCPs. However, the definition in the final rule does not include depository institutions that are engaged in carrying out banking-related activities, including providing custodial services for tri-party repurchase agreements. The definition also explicitly excludes certain types of entities (*e.g.,* registered futures associations, swap data repositories) and other types of entities that perform certain functions for or related to FMUs (*e.g.,* futures commission merchants).

remain subject to the final rule's requirements.

The final rule does not explicitly exclude futures and cleared swaps agreements with a futures commission merchant, as requested by a commenter. The nature and scope of the requested exclusion is unclear, and, therefore, it is unclear whether the exclusion would be necessary, on the one hand, or overbroad, on the other hand. However, the final rule makes a number of other clarifications and exemptions that may help address the commenter's concern regarding FCM agreements.

Exclusion of certain QFCs under multi-branch master agreements of foreign banking organizations. To avoid imposing unnecessary restrictions on QFCs that are not closely connected to the United States, the proposal excluded from the definition of ''covered QFC'' certain QFCs of foreign GSIBs that lack a close connection to the foreign GSIB's U.S. operations.[135] The proposed definition of ''QFC'' included master agreements that apply to QFCs.[136] Master agreements are contracts that contain general terms that the parties wish to apply to multiple transactions between them; having executed the master agreement, the parties can then include those terms in future contracts through reference to the master agreement. Moreover, the Dodd-Frank Act's definition of ''qualified financial contract,'' which the proposal would adopt, treats master agreements for QFCs together with all supplements to the master agreement (including underlying transactions) as a single QFC.[137]

Foreign GSIBs have master agreements that permit transactions to be entered into both at a U.S. branch or U.S. agency of the foreign GSIB and at a non-U.S. location of the foreign GSIB (such as a foreign branch). Notwithstanding the proposal's general treatment of a master agreement and all QFCs thereunder as a single QFC, the proposal would have excluded QFCs under such a ''multi-branch master agreement'' that are not booked at a covered entity and for which no payment or delivery may be made at a covered entity.[138] Under the proposal, a multi-branch master agreement was a covered QFC with respect to QFC transactions that are booked at a covered entity or for which payment or delivery may be made at a covered entity.

Commenters expressed support for this exclusion, but requested that the requirement exclude from the definition of covered QFC those transactions under master agreements where payment and deliveries may be made by or to the U.S. branch or agency so long as the transactions or assets are not booked in the U.S. branch or agency. These commenters argued that the ability to make payments or delivery alone does not make a QFC sufficiently closely connected to the United States to raise the concerns about resolution that the rule is intended to address. Commenters also argued that the requirement to include new contractual terms in a QFC where payment or delivery may occur in the United States would require foreign GSIBs to amend many additional QFCs booked abroad, many of which must also be amended to comply with contractual stay requirements of the foreign GSIBs' home country regulatory regimes. Commenters argued that amending such QFCs under multi-branch master agreements that are not booked in the United States would require some foreign GSIBs to amend thousands of contracts at significant cost and would impose a disproportionate burden on foreign GSIBs as compared to U.S. GSIBs. These commenters argued this would impose a significant burden on non-U.S. covered entities with no benefit to U.S. financial stability, as these QFCs would not be expected to be subject to a U.S. resolution regime.

One commenter also recommended that multi-branch master agreements be treated as a single QFC, rather than requiring the application of different requirements to different transactions thereunder, so as to align the rule's requirements with current industry-standard documentation and to avoid additional implementation hurdles and costs. The commenter recommended that the entirety of a multi-branch master agreement and underlying transactions be a covered QFC if a new QFC with the counterparty or its consolidated affiliates is booked to the U.S. branch or agency after the compliance date or if a new QFC is entered into with an affiliate of the U.S. branch or agency that is also subject to the requirements.

The final rule has been modified from the proposal to address the concerns raised by commenters. In particular, the final rule provides that, with respect to a U.S. branch or U.S. agency of a foreign GSIB, a foreign GSIB multi-branch master agreement that is a covered QFC solely because the master agreement permits agreements or transactions that are QFCs to be entered into at one or more U.S. branches or U.S. agencies of the foreign GSIB will be considered a covered QFC for purposes of this subpart only with respect to such agreements or transactions booked at such U.S. branches and U.S. agencies.[139] The final rule does not provide that such an agreement will be a covered QFC solely because payment or delivery may be made at such U.S. branch or agency. These modifications will avoid imposing unnecessary restrictions on QFCs that are not closely connected to the United States and will mitigate burden and reduce costs on foreign GSIBs without undermining the purpose of the final rule. The purpose of this exclusion is to help ensure that, where a foreign GSIB has a multi-branch master agreement, the foreign GSIB will only have to conform those QFCs entered into under the multi-branch master agreement that could have the most direct effect on the covered U.S. branch or U.S. agency of the foreign GSIB and that could therefore have the most direct effect on the resolution of the foreign GSIB and the financial stability of the United States.

The final rule does not, as requested by one commenter, deem the entirety of a multi-branch master agreement to be a covered QFC if a new QFC with the counterparty (or its consolidated affiliate) is booked to the covered entity or its affiliate. Many commenters supported excluding transactions from multi-branch master netting agreements that are not closely connected to the United States. In contrast to the proposal and these comments, the modification requested by this commenter would require transactions that are not booked in the United States or otherwise connected to the United States to be conformed to the requirements of the final rule. The commenter's concerns regarding costs associated with potentially breaking netting sets may nonetheless be addressed through adherence to the Universal Protocol or the U.S. Protocol, which are discussed below.

[135] *See* proposed rule § 252.86.

[136] *See* proposed rule § 252.81.

[137] 12 U.S.C. 5390(c)(8)(D)(viii); *see also* 12 U.S.C. 1821(e)(8)(D)(vii); 109 H. Rpt. 31, Prt. 1 (April 8, 2005) (explaining that a ''master agreement for one or more securities contracts, commodity contracts, forward contracts, repurchase agreements or swap agreements will be treated as a single QFC under the FDIA or the [Federal Credit Union Act] (but only with respect to the underlying agreements are themselves QFCs)'').

[138] *See* proposed rule § 252.86(a). With respect to a U.S. branch or U.S. agency of a foreign GSIB, a multi-branch master agreement that is a covered QFC solely because the master agreement permits agreements or transactions that are QFCs to be entered into at one or more U.S. branches or U.S. agencies of the foreign GSIB was considered a covered QFC for purposes of the proposal only with respect to such agreements or transactions booked at such U.S. branches and U.S. agencies or for which a payment or delivery may be made at such U.S. branches or U.S. agencies.

[139] *See* final rule § 252.86.

QFCs with Central Banks and Sovereign Entities. The proposal included covered QFCs with sovereign entities and central banks, consistent with Title II of the Dodd-Frank Act and the FDI Act. Commenters urged the Board to exclude QFCs with central bank and sovereign counterparties from the final rule. Commenters argued that sovereign entities might not be willing to agree to limitations on their QFC default rights and noted that other countries' measures, such as those of the United Kingdom and Germany, consistent with their governing laws, exclude central banks and sovereign entities. Commenters contended that central banks and sovereign entities are sensitive to financial stability concerns and resolvability goals, thus reducing the concern that they would exercise default rights in a way that would undermine resolvability of a GSIB or financial stability. Commenters indicated it was unclear whether central banks or sovereign entities would be permitted under applicable statutes to enter into QFCs with limited default rights, but did not provide specific examples of such statutes.[140] Commenters further noted that these entities did not participate in the development of the Universal Protocol and that the Universal Protocol does not provide a viable mechanism for compliance with the final rule by these entities.

The Board continues to believe that covering QFCs with sovereigns and central banks under the final rule is an important requirement and has not modified the final rule to address the requests made by commenters. Excluding QFCs with sovereigns and central banks would be inconsistent with Title II of the Dodd-Frank Act and the FDI Act. Moreover, the mass termination of such QFCs has the potential to undermine the resolution of a GSIB and the financial stability of the United States. The final rule provides covered entities two years to conform covered QFCs with central banks and sovereigns (as well as certain other counterparties, as discussed below). This additional time should provide covered entities sufficient time to develop separate conformance mechanisms for sovereigns and central banks, if necessary.

C. Definition of ''Default Right'' (Section 252.81 of the Final Rule)

As discussed above, a party to a QFC generally has a number of rights that it can exercise if its counterparty defaults on the QFC by failing to meet certain contractual obligations. These rights are generally, but not always, contractual in nature. One common default right is a setoff right: The right to reduce the total amount that the non-defaulting party must pay by the amount that its defaulting counterparty owes. A second common default right is the right to liquidate pledged collateral and use the proceeds to pay the defaulting party's net obligation to the non-defaulting party. Other common rights include the ability to suspend or delay the non-defaulting party's performance under the contract or to accelerate the obligations of the defaulting party. Finally, the non-defaulting party typically has the right to terminate the QFC, meaning that the parties would not make payments that would have been required under the QFC in the future. The phrase ''default right'' in the proposed rule was broadly defined to include these common rights as well as ''any similar rights.'' [141] Additionally, the definition included all such rights regardless of source, including rights existing under contract, statute, or common law.

However, the proposed definition of default right excluded two rights that are typically associated with the business-as-usual functioning of a QFC. First, same-day netting that occurs during the life of the QFC in order to reduce the number and amount of payments each party owes the other was excluded from the definition of ''default right.'' [142] Second, contractual margin requirements that arise solely from the change in the value of the collateral or the amount of an economic exposure were also excluded from the definition.[143] The reason for these exclusions was to leave such rights unaffected by the proposed rule. The proposal's preamble explained that such exclusions were appropriate because the proposal was intended to improve resolvability by addressing default rights that could disrupt an orderly resolution, not to interrupt the parties' business-as-usual interactions under a QFC.

However, certain QFCs are also commonly subject to rights that would increase the amount of collateral or margin that the defaulting party (or a guarantor) must provide upon an event of default. The financial impact of such default rights on a covered entity could be similar to the impact of the liquidation and acceleration rights discussed above. Therefore, the proposed definition of ''default right'' included such rights (with the exception discussed in the previous paragraph for margin requirements based solely on the value of collateral or the amount of an economic exposure).[144]

Finally, contractual rights to terminate without the need to show cause, including rights to terminate on demand and rights to terminate at contractually specified intervals, were excluded from the definition of ''default right'' under the proposal for purposes of the proposed rule's restrictions on cross-default rights.[145] This exclusion was consistent with the proposal's objective of restricting only default rights that are related, directly or indirectly, to the entry into resolution of an affiliate of the covered entity, while leaving other default rights unrestricted.

Commenters expressed support for a number of aspects of the definition of default rights. For example, a number of commenters supported the proposed exclusion from the definition of ''default right'' of contractual rights to terminate without the need to show cause, noting that such rights exist for a variety of reasons and that reliance on these rights is unlikely to result in a fire sale of assets during a GSIB resolution. At least one commenter requested that this exclusion be expanded to include force majeure events. Commenters also expressed support for the exclusion for what commenters referred to as ''business-as-usual'' payments associated with a QFC. However, these commenters requested clarification that certain ''business-as-usual'' actions would not be included in the definition of default right, such as payment netting, posting and return of collateral, procedures for the substitution of collateral and modification to the terms of the QFC, and also requested clarification that the definition of ''default right'' would not include off-setting transactions to third parties by the non-defaulting counterparty. One commenter urged that, if the Board's goal is to provide that a party cannot enforce a provision that requires more margin because of a credit downgrade but may demand more margin for market price changes, the rule should state so explicitly. Another commenter

[140] These commenters argued that, to the extent central banks and sovereign entities are unable or unwilling to agree to limitations on their QFC default rights, application of the rule's requirements to QFCs with these entities creates a significant disincentive for these entities to enter into QFCs with covered entities, resulting in the loss of valuable counterparties in a way that will hinder market liquidity and covered entity risk management.

[141] *See* proposed rule § 252.81.

[142] *See id.*

[143] *See id.*

[144] *See id.*

[145] *See* proposed rule §§ 252.81, 252.84.

expressed concern that the definition of default right in the proposal would permit a defaulting covered entity to demand collateral from its QFC counterparty as margin due to a market price change, but would not allow the non-covered entity to demand collateral from the covered entity.

The final rule retains the same definition of ''default right'' as that of the proposal.[146] The Board believes that the definition of default right is sufficiently clear and that additional modifications are not needed to address the concerns raised by commenters. The final rule does not adopt a particular exclusion for force majeure events, as requested by certain commenters, as it is not clear—without reference to particular contractual provisions—what this term would encompass. Moreover, it should be clear that events typically considered to be captured by force majeure clauses (*e.g.,* natural disasters) would not be related, directly or indirectly, to the resolution of an affiliate.[147]

''Business-as-usual'' rights regarding changes in collateral or margin would not be included within the definition of default right to the extent that the right or operation of a contractual provision arises solely from either a change in the value of collateral or margin or a change in the amount of an economic exposure. In response to commenters' requests for clarification, this exception includes changes in margin due to changes in market price, but does not include changes due to counterparty credit risk (*e.g.,* credit rating downgrades). Therefore, the right of either party to a covered QFC to require margin due to changes in market price would be unaffected by the definition of default right. Moreover, default rights that arise before a covered entity or its affiliate enter resolution and that would not be affected by the stay-and-transfer provisions of the U.S. Special Resolution Regimes also would not be affected.

Regarding transactions with third parties, the final rule, like the proposal, does not require covered entities to address default rights in QFCs solely between parties that are not covered entities (*e.g.,* off-setting transactions to third parties by the non-defaulting counterparty, to the extent none are covered entities).

D. Required Contractual Provisions Related to the U.S. Special Resolution Regimes (Section 252.83 of the Final Rule)

The proposed rule generally would have required a covered QFC to explicitly provide both (a) that the transfer of the QFC (and any interest or obligation in or under it and any property securing it) from the covered entity to a transferee would be effective to the same extent as it would be under the U.S. Special Resolution Regimes if the covered QFC were governed by the laws of the United States or of a state of the United States and (b) that default rights with respect to the covered QFC that could be exercised against a covered entity could be exercised to no greater extent than they could be exercised under the U.S. Special Resolution Regimes if the covered QFC were governed by the laws of the United States or of a state of the United States.[148] The final rule contains these same provisions.[149]

A number of commenters noted that the wording of these requirements in proposed section 252.83(b) was confusing and could be read to be inconsistent with the intent of the section. In response to comments, the final rule makes clearer that the substantive restrictions apply only in the event the covered entity (or, in the case of the requirement regarding default rights, its affiliate) becomes subject to a proceeding under a U.S. Special Resolution Regime.[150]

A number of commenters argued that QFCs should be exempt from the requirements of proposed section 252.83 if the QFC is governed by U.S. law. An example of such a QFC provided by commenters includes the standard form repurchase and securities lending agreement published by the Securities Industry and Financial Markets Association. These commenters argued that counterparties to such agreements are already required to observe the stay-and-transfer provisions of the FDI Act and Title II of the Dodd-Frank Act, as mandatory provisions of U.S. federal law, and that requiring an amendment of these types of QFCs to include the express provisions required under section 252.83 would be redundant and would not provide any material resolution benefit, but would significantly increase the remediation burden on covered entities.

Other commenters proposed a three-prong test of ''nexus with the United States'' for purposes of recognizing an exclusion from the express acknowledgment of the requirements of proposed section 252.83. In particular, these commenters argued that the presence of two factors, in addition to the contract being governed by U.S law, would provide greater certainty that courts would apply the stay-and-transfer provisions of the FDI Act and Title II of the Dodd-Frank Act: (1) If a contract is entered into between entities organized in the United States; and (2) to the extent the GSIB's obligations under the QFC are collateralized, if the collateral is held with a U.S. custodian or depository pursuant to an account agreement governed by U.S. law.[151] Other commenters contended that only whether the contract is under U.S. law, and not the location of the counterparty or the collateral, is relevant to the analysis of whether the FDI Act and the Dodd-Frank Act would govern the contract. Commenters also requested that if the first additional factor (*i.e.,* that the QFC be entered into between entities organized in the United States) were to be included within the exception, it should be broadened to include counterparties that have principal places of business or that are otherwise domiciled in the United States.

The requirements of the final rule seek to provide certainty that all covered QFCs would be treated the same way in the context of a resolution of a covered entity under the Dodd-Frank Act or the FDI Act. The stay-and-transfer provisions of the U.S. Special Resolution Regimes should be enforced with respect to all contracts of any U.S. GSIB entity that enters resolution under a U.S. Special Resolution Regime, as well as all transactions of the subsidiaries of such an entity. Nonetheless, it is possible that a court in a foreign jurisdiction would decline to enforce those provisions. In general, the requirement that the effect of the statutory stay-and-transfer provisions be incorporated directly into the QFC contractually helps to ensure that a court in a foreign jurisdiction would enforce the effect of those provisions, regardless of whether the court would otherwise have decided to enforce the U.S. statutory provisions.[152] Further, the knowledge that a court in a foreign

[146] *See* final rule § 252.81.

[147] *See* final rule § 252.84(b).

[148] *See* proposed rule § 252.83(b).

[149] *See* final rule § 252.83(c).

[150] *See id.*

[151] These commenters noted that it would be unlikely that any court interpreting a QFC governed by U.S. law could have a reasonable basis for disregarding the stay-and-transfer provisions of the FDI Act or Title II of the Dodd-Frank Act.

[152] *See generally* Financial Stability Board, ''Principles for Cross-border Effectiveness of Resolution Actions'' (Nov. 3, 2015), *http://www.fsb.org/wp-content/uploads/Principles-for-Cross-border-Effectiveness-of-Resolution-Actions.pdf.*

jurisdiction would reject the purported exercise of default rights in violation of the required contractual provisions would deter covered entities' counterparties from attempting to exercise such rights.

In response to comments, the final rule exempts from the requirements of section 252.83 a covered QFC that meets two requirements.[153] First, the covered QFC must state that it is governed by the laws of the United States or a state of the United States.[154] It has long been clear that the laws of the United States and the laws of a state of the United States both include U.S. federal law, such as the U.S. Special Resolution Regimes.[155] Therefore, this requirement ensures that contracts that meet this exemption also contain language that helps ensure that foreign courts will enforce the stay-and-transfer provisions of the U.S. Special Resolution Regimes. Second, the QFC counterparty to the covered entity must be organized under the laws of the United States or a State,[156] have its principal place of business [157] located in the United States, or be a U.S. branch or agency.[158] Similarly, a counterparty that is an individual must be domiciled in the United States.[159] This requirement helps ensure that the FDIC will be able to quickly and easily enforce the stay-and-transfer provisions of the U.S. Special Resolution Regimes.[160] This exemption is expected to significantly reduce the burden associated with complying with the final rule while continuing to provide assurance that the stay-and-transfer provisions of the U.S. Special Resolution Regimes may be enforced.

This section of the final rule is consistent with efforts by regulators in other jurisdictions to address similar risks by requiring that financial firms within their jurisdictions ensure that the effect of the similar provisions under these foreign jurisdictions' respective special resolution regimes would be enforced by courts in other jurisdictions, including the United States. For example, the U.K.'s Prudential Regulation Authority (PRA) recently required certain financial firms to ensure that their counterparties to newly created obligations agree to be subject to stays on early termination that are similar to those that would apply upon a U.K. firm's entry into resolution if the financial arrangements were governed by U.K. law.[161] Similarly, the German parliament passed a law in November 2015 requiring German financial institutions to have provisions in financial contracts that are subject to the law of a country outside of the European Union that acknowledge the provisions regarding the temporary suspension of termination rights and accept the exercise of the powers regarding such temporary suspension under the German special resolution regime.[162] Additionally, the Swiss Federal Council requires that banks ''ensure at both the individual institution and group level that new agreements or amendments to existing agreements which are subject to foreign law or envisage a foreign jurisdiction are agreed only if the counterparty recognises a postponement of the termination of agreements in accordance with'' the Swiss special resolution regime.[163] Japan's Financial Services Agency also revised its supervisory guidelines for major banks to require those banks to ensure that the effect of the statutory stay decision and statutory special creditor protections under Japanese resolution regimes extends to contracts governed by foreign laws.[164]

Commenters also argued that it would be more appropriate for Congress to act to obtain cross-border recognition of U.S. Special Resolution Regimes, rather than for the Board to do so through this final rule. The Board believes it is appropriate to adopt this final rule in order to promote U.S. financial stability by improving the resolvability and resilience of U.S. GSIBs and foreign GSIBs pursuant to section 165 of the Dodd-Frank Act. Because of the current risk that the stay-and-transfer provisions of U.S. Special Resolution Regimes may not be recognized under the laws of other jurisdictions, section 252.83 of the final rule requires similar contractual recognition to help ensure that courts in foreign jurisdictions will recognize these provisions.

This requirement would advance the goal of the final rule of removing QFC-related obstacles to the orderly resolution of a GSIB. As discussed above, restrictions on the exercise of QFC default rights are an important prerequisite for an orderly GSIB resolution. Congress recognized the importance of such restrictions when it enacted the stay-and-transfer provisions of the U.S. Special Resolution Regimes. As demonstrated by the 2007–2009 financial crisis, the modern financial system is global in scope, and covered entities are party to large volumes of QFCs with connections to foreign

[153] *See* final rule § 252.83(a).

[154] However, a contract that explicitly provides that one or both of the U.S. Special Resolution Regimes, including a broader set of laws that includes a U.S. special resolution regime, is excluded from the laws governing the QFC would not meet this exemption under the final rule. For example, a covered QFC would not meet this exemption if the contract stated that it was governed by the laws of the state of New York but also stated that it was not governed by U.S. federal law. In contrast, a contract that stated that it was governed by the laws of the state of New York but opted out of a specific, non-mandatory federal law (*e.g.,* the Federal Arbitration Act) would meet this exemption. *Cf. Volt Info. Scis.* v. *Bd. Of Trs.,* 489 U.S. 468 (1989).

[155] Although many QFCs only explicitly state that the contract is governed by the laws of a specific state of the United States, it has been made clear on numerous occasions that the laws of each state include federal law. *See, e.g., Hauenstain* v. *Lynham,* 100 U.S. 483, 490 (1979) (stating that federal law is ''as much a part of the law of every State as its own local laws and the Constitution''); *Fid. Fed. Sav. & Loan Ass'n* v. *de la Cuesta,* 458 U.S. 141, 157 (1982) (same); *Testa* v. *Katt,* 330 U.S. 386, 393 (1947) (''For the policy of the federal Act is the prevailing policy in every state.'').

[156] For purposes of this requirement of the exemption, ''State'' means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands. 12 CFR 252.2(y).

[157] *See Hertz Corp.* v. *Friend,* 559 U.S. 77 (2010) (describing the appropriate test for principal place of business).

[158] *See* final rule § 252.83(a)(1)(ii).

[159] *See id.*

[160] *See, e.g., Daimler AG* v. *Bauman,* 134 S. Ct. 746 (2014); *Goodyear Dunlop Tires Operations, S.A.* v. *Brown,* 564 U.S. 915 (2011); *Hertz Corp.* v. *Friend,* 559 U.S. 77 (2010).

[161] *See* PRA Rulebook: CRR Firms and Non-Authorised Persons: Stay in Resolution Instrument 2015, (Nov. 12, 2015), *http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2515app1.pdf; see also* Bank of England, Prudential Regulation Authority, ''Contractual stays in financial contracts governed by third-country law'' (PS25/15), (Nov. 2015), *http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2515.pdf.* These PRA rules apply to PRA-authorized banks, building societies, PRA-designated investment firms, and their qualifying parent undertakings, including UK financial holding companies and UK mixed financial holding companies.

[162] *See* Gesetz zur Sanierung und Abwicklung von Instituten und Finanzgruppen, Sanierungs-und Abwicklungsgesetz [SAG] [German Act on the Reorganisation and Liquidation of Credit Institutions], Dec. 10, 2014, § 60a, *https://www.gesetze-im-internet.de/bundesrecht/sag/gesamt.pdf,* as amended by Gesetz zur Anpassung des nationalen Bankenabwicklungsrechts an den Einheitlichen Abwicklungsmechanismus und die europäischen Vorgaben zur Bankenabgabe, Nov. 2, 2015, Artikel 1(17).

[163] *See* Verordnung über die Finanzmarktinfrastrukturen und das Marktverhalten im Effekten- und Derivatehandel [FinfraV] [Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading] Nov. 25, 2015, amending Bankenverordnung vom 30. April 2014 [BankV] [Banking Ordinance of 30 April 2014] Apr. 30, 2014, SR 952.02, art. 12 paragraph 2bis, *translation at http://www.news.admin.ch/NSBSubscriber/message/attachments/42659.pdf; see also* Erläuterungsbericht zur Verordnung über die Finanzmarktinfrastrukturen und das Marktverhalten im Effekten- und Derivatehandel (Nov. 25, 2015) (providing commentary).

[164] *See* section III–11 of Comprehensive Guidelines for Supervision of Major Banks, etc., *http://www.fsa.go.jp/common/law/guide/city.pdf.*

jurisdictions. The stay-and-transfer provisions of the U.S. Special Resolution Regimes would not achieve their purpose of facilitating orderly resolution in the context of the failure of a GSIB with large volumes of QFCs if such QFCs could escape the effect of those provisions. To remove doubt about the scope of coverage of these provisions, the requirements of section 252.83 of the final rule would ensure that the stay-and-transfer provisions apply as a matter of contract to all covered QFCs, wherever the transaction. This will advance the resolvability goals of the Dodd-Frank Act and the FDI Act and improve the resiliency of firms subject to the requirements.

E. Prohibited Cross-Default Rights (Section 252.84 of the Final Rule)

Definitions. Section 252.84 of the final rule, like the proposal, pertains to cross-default rights in QFCs between covered entities and their counterparties, many of which are subject to credit enhancements (such as a guarantee) provided by an affiliate of the covered entity. Because credit enhancements on QFCs are themselves ''qualified financial contracts'' under the Dodd-Frank Act's definition of that term (which this final rule adopts), the final rule includes the following additional definitions in order to facilitate a precise description of the relationships to which it would apply. These definitions are the same as under the proposal since no comments were received on these definitions.

First, the final rule distinguishes between a credit enhancement and a ''direct QFC,'' defined as any QFC that is not a credit enhancement.[165] The final rule also defines ''direct party'' to mean a covered entity that is itself a party to the direct QFC, as distinct from an entity that provides a credit enhancement.[166] In addition, the final rule defines ''affiliate credit enhancement'' to mean ''a credit enhancement that is provided by an affiliate of a party to the direct QFC that the credit enhancement supports,'' as distinct from a credit enhancement provided by either the direct party itself or by an unaffiliated party.[167] Moreover, the final rule defines ''covered affiliate credit enhancement'' to mean an affiliate credit enhancement provided by a covered entity or excluded bank and defines ''covered affiliate support provider'' to mean the affiliate of the covered entity that provides the covered affiliate credit enhancement.[168] Finally, the final rule defines the term ''supported party'' to mean any party that is the beneficiary of the covered affiliate support provider's obligations under a covered affiliate credit enhancement (that is, the QFC counterparty of a direct party, assuming that the direct QFC is subject to a covered affiliate credit enhancement).[169]

General prohibitions. The final rule, like the proposal, prohibits a covered entity from being party to a covered QFC that allows for the exercise of any default right that is related, directly or indirectly, to the entry into resolution of an affiliate of the covered entity, subject to the exceptions discussed below.[170] The final rule also generally prohibits a covered entity from being party to a covered QFC that would prohibit the transfer of any credit enhancement applicable to the QFC (such as another entity's guarantee of the covered entity's obligations under the QFC), along with associated obligations or collateral, upon the entry into resolution of an affiliate of the covered entity.[171]

One commenter expressed strong support for these provisions.[172] Another commenter expressed support for this provision as currently limited in scope under the proposal to prohibited cross-default rights and requested that the scope not be expanded. The Board's final rule retains the same scope as the proposal.

A number of commenters representing counterparties to covered entities objected to section 252.84 of the proposal and requested the elimination of this provision. These commenters expressed concern about limitations on counterparties' exercise of default rights during insolvency proceedings and argued that rights should not be taken away from contracting parties other than where limitation of such rights is necessary for public policy reasons and the resolution process is controlled by a regulatory authority with particular expertise in the resolution of the type of entity subject to the proceedings. Certain commenters argued that eliminating cross-default termination rights undermines the ability of QFC counterparties to effectively manage and mitigate their exposure to market and credit risk to a GSIB and interferes with market forces. One commenter similarly argued that, unless the Board takes appropriate measures to strengthen the financial condition and creditworthiness of a failing GSIB during and after the temporary stay, the stay will only expose QFC counterparties to an additional 48 hours of credit risk exposure without achieving the orderly resolution goals of the rule. Another commenter argued that non-defaulting counterparties should not be prevented from filing proofs of claim or other pleadings in a bankruptcy case during the stay period, since bankruptcy deadlines might pass and leave the counterparty unable to collect the unsecured creditor dividend. Commenters contended that restrictions on cross-default rights may lead to pro-cyclical behavior with asset managers moving funds away from covered entities as soon as those entities show signs of distress, and perhaps even in normal situations, and would disadvantage non-GSIB parties (*e.g.,* end users who rarely receive initial margin from GSIB counterparties and are less well protected against a GSIB default).[173]

[165] *See* final rule § 252.84(c)(2).

[166] *See* final rule § 252.84(c)(1).

[167] *See* final rule § 252.84(c)(3).

[168] *See* final rule § 252.84(e)(2)–(3).

[169] *See* final rule § 252.84(e)(4).

[170] *See* final rule § 252.84(b)(1). A few commenters requested that the Board clarify that covered QFCs that do not contain the cross-default rights or transfer restrictions on credit enhancement that are prohibited by section 252.84 would not be required to be remediated. This reading of section 252.84 of the proposed and final rule is correct. In addition, section 252.84(a) of the final rule provides the requested clarity.

[171] *See* final rule § 252.84(b)(2). This prohibition is subject to an exception that would allow supported parties to exercise default rights with respect to a QFC if the supported party is prohibited from being the beneficiary of a credit enhancement provided by the transferee under any applicable law, including the Employee Retirement Income Security Act of 1974 and the Investment Company Act of 1940. This exception is substantially similar to an exception to the transfer restrictions in section 2(f) of the ISDA 2014 Resolution Stay Protocol (2014 Protocol) and the Universal Protocol, which was added to address concerns expressed by asset managers during the drafting of the 2014 Protocol.

One commenter requested that the exception be broadened to include transfers that would result in the supported party being unable, without further action, to satisfy the requirements of any law applicable to the supported party. As an example of a type of transfer that the commenter intended to be included within the broadened exception, the commenter stated that the supported party would be able to prevent the transfer if it would result in less favorable tax treatment. The exception would seem to also include filing requirements that may arise as a result of transfer or other requirements that could be satisfied with minimal ''action'' by, or cost to, the supported party. More generally, the scope of the laws that supported parties deem themselves to satisfy and the method of such satisfaction is unclear and potentially very broad.

The final rule retains the exception as proposed. The requested exception would add uncertainty as to whether transfers may be made during the stay period and potentially subsume the transfer prohibition.

[172] This commenter also expressed support for Congressional amendment of the U.S. Bankruptcy Code.

[173] One commenter stated that, to the extent the final rule prevents an insurer from terminating QFC transactions upon the credit rating downgrade of a GSIB counterparty, the insurer may be in violation of state insurance laws that typically impose strict

Some commenters argued that, if these rights must be restricted by law, Congress should impose such restrictions and that the requirements of the proposed rule circumvented the legislative process by creating a de facto amendment to the U.S. Bankruptcy Code that forecloses countless QFC counterparties from exercising their rights of cross-default protection under section 362 of the U.S. Bankruptcy Code. Some of these commenters argued that parties cannot by contract alter the U.S. Bankruptcy Code's provisions, such as the administrative priority of a claim in bankruptcy, and one commenter suggested that non-covered entity counterparties may challenge the legality of contractual stays on the exercise of default rights if a GSIB becomes distressed. Certain commenters also questioned the Board's ability to rely on section 165 of the Dodd-Frank Act in imposing these requirements and argued that making SPOE resolution possible under the U.S. Bankruptcy Code was not an appropriate justification for this rule. Other commenters, however, argued that the provisions of the proposed rule were necessary to address systemic risks posed by the exemption for QFCs in the U.S. Bankruptcy Code.

As an alternative to eliminating these requirements, these commenters expressed the view that, if the Board moves forward with these provisions, the final rule should include at least those minimum creditor protections established by the Universal Protocol. Certain commenters also argued that this provision was overly broad in that it covered not only U.S. federal resolution and insolvency proceedings but also state and foreign resolution and insolvency proceedings.[174] Certain commenters also urged the Board to provide a limited exception to these restrictions, if retained in the final rule, to help ensure the continued functioning of physical commodities markets.[175]

Some commenters argued that the Board should eliminate the stay on default rights that are related ''indirectly'' to an affiliate of the direct party becoming subject to insolvency proceedings, claiming it is unclear what constitutes a right related ''indirectly'' to insolvency and noting that any default right exercised by a counterparty after an affiliate of that counterparty enters resolution could arguably be motivated by the affiliate's entry into resolution.

A primary purpose of these restrictions is to facilitate the resolution of a GSIB outside of Title II of the Dodd-Frank Act, including under the U.S. Bankruptcy Code. As discussed above, the potential for mass exercises of QFC default rights is one reason why a GSIB's failure could cause severe damage to financial stability. In the context of an SPOE resolution, if the GSIB parent's entry into resolution led to the mass exercise of cross-default rights by the subsidiaries' QFC counterparties, then the subsidiaries could themselves fail or experience financial distress. Moreover, the mass exercise of QFC default rights could entail asset fire sales, which likely would affect other financial companies and undermine financial stability. Similar disruptive results can occur with an MPOE resolution of a GSIB affiliate if an otherwise performing GSIB entity is subject to having its QFCs terminated or accelerated as a result of the default of its affiliate.

In an SPOE resolution, this damage can be avoided if actions of the following two types are prevented: The exercise of direct default rights against the top-tier holding company that has entered resolution, and the exercise of cross-default rights against the operating subsidiaries based on their parent's entry into resolution. (Direct default rights against the subsidiaries would not be exercisable, because the subsidiaries would not enter resolution.) In an MPOE resolution, this damage occurs from exercise of default rights against a performing entity based on the failure of an affiliate.

Title II of the Dodd-Frank Act's stay-and-transfer provisions would address both direct default rights and cross-default rights. But, as explained above, no similar statutory provisions would apply to a resolution under the U.S. Bankruptcy Code. The final rule attempts to address these obstacles to orderly resolution by extending the stay-and-transfer provisions to any type of resolution of a covered entity. Similarly, the final rule would facilitate a transfer of the GSIB parent's interests in its subsidiaries, along with any credit enhancements it provides for those subsidiaries, to a solvent financial company by prohibiting covered entities from having QFCs that would allow the QFC counterparty to prevent such a transfer or to use it as a ground for exercising default rights.[176]

The final rule also is intended to facilitate other approaches to GSIB resolution. For example, it would facilitate a similar resolution strategy in which a U.S. depository institution subsidiary of a GSIB enters resolution under the FDI Act while its subsidiaries continue to meet their financial obligations outside of resolution.[177] Similarly, the final rule would facilitate the orderly resolution of a foreign GSIB under its home jurisdiction resolution regime by preventing the exercise of cross-default rights against the foreign GSIB's U.S. operations. The final rule would also facilitate the resolution of an IHC of a foreign GSIB, and the recapitalization of its U.S. operating subsidiaries, as part of a broader MPOE resolution strategy under which the foreign GSIB's operations in other

counterparty credit rating guidelines and limits. This commenter did not give any specific examples of such laws. Counterparties, including insurance companies, should evaluate and comply with all relevant applicable requirements.

[174] Certain commenters also indicated that these provisions should only apply to U.S. Special Resolution Regimes, which provide certain protections for counterparties, or, at most, to U.S. Special Resolution Regimes, resolution under the Securities Investor Protection Act, and insolvency under Chapter 11 of the U.S. Bankruptcy Code. That commenter noted that liquidation and insolvency under Chapter 7 of the Bankruptcy Code do not seek to preserve the GSIB as a viable entity, which is an objective of this proposal. As discussed later, the rule seeks to facilitate the resolution of a GSIB outside of U.S. Special Resolution Regimes, including under the U.S. Bankruptcy Code, and is intended to facilitate other approaches to GSIB resolution. Therefore, the final rule applies these provisions in the same way as the proposal. In addition, the additional creditor protections for supported parties under the final rule permit contractual requirements that any transferee not be in bankruptcy proceedings and that the credit support provider not be in bankruptcy proceedings other than a Chapter 11 proceeding. *See* final rule § 252.84(f).

[175] In particular, these commenters requested that, when a covered entity defaults on any physical delivery obligation to any counterparty following the insolvency of an affiliate of a covered entity, its counterparties with obligations to deliver or take delivery of physical commodities within a short time frame after the default should be able to immediately terminate all trades (both physical and financial) with the covered entity. The final rule, like the proposal, allows covered QFCs to permit a counterparty to exercise its default rights under a covered QFC if the covered entity has failed to pay or perform its obligations under the covered QFC. *See* final rule § 252.84(d). The final rule, like the proposal, also allows covered QFCs to permit a counterparty to exercise its default rights under a covered QFC if the covered entity has failed to pay or perform on other contracts between the same parties and the failure gives rise to a default right in the covered QFC. *See id.* These exceptions should help reduce credit risk and ensure the smooth operation of the physical commodities markets without permitting one failure to pay or perform by a covered entity to allow a potentially large number of its counterparties that are not directly affected by the failure to exercise their default rights and thereby endanger the viability of the covered entity.

[176] *See* final rule § 252.84(b).

[177] As discussed above, the FDI Act would limit the exercise of direct default rights against the depository institution, but does not address the threat posed to orderly resolution by cross-default rights in the QFCs of the depository institution's subsidiaries. This final rule would facilitate orderly resolution under the FDI Act by filling that gap. *See* final rule § 252.84(h).

regions would enter separate resolution proceedings. Finally, the final rule would broadly prevent the unanticipated failure of any one GSIB entity from bringing about the disorderly failures of its affiliates by preventing the affiliates' QFC counterparties from using the first entity's failure as a ground for exercising default rights against those affiliates that continue to meet their obligations.

The final rule is intended to enhance the potential for orderly resolution of a GSIB under the U.S. Bankruptcy Code, the FDI Act, or a similar resolution regime. The risks to an orderly resolution under the U.S. Bankruptcy Code include separate resolution or insolvency proceedings, including proceedings in non-U.S. jurisdictions. Therefore, by staying default rights arising from affiliates entering such proceedings, the final rule would advance the Dodd-Frank Act's goal of making orderly GSIB resolution workable under the U.S. Bankruptcy Code.[178]

Likewise, the final rule retains the prohibition against contractual provisions that permit the exercise of default rights that are indirectly related to the resolution of an affiliate. QFCs may include a number of default rights triggered by an event that is not the resolution of an affiliate but is caused by the resolution, such as a credit rating downgrade in response to the resolution. A primary purpose of the final rule is to prevent early terminations caused by the resolution of an affiliate. A regulation that specifies each type of early termination provision that should be stayed would be over-inclusive, under-inclusive, and easy to evade. Similarly, a stay of default rights that are only directly related to the resolution of an affiliate could increase the likelihood of litigation to determine if the relationship between the default right and the affiliate resolution was sufficient to be considered ''directly'' related. The final rule attempts to decrease such uncertainty and litigation risk by including default rights that are related (*i.e.,* directly or indirectly) to the resolution of an affiliate.

Moreover, the final rule does not affect parties' rights under the U.S. Bankruptcy Code. As explained above, the regulation does not prohibit a covered QFC from permitting the exercise of default rights against a covered entity that has entered bankruptcy proceedings.[179] Therefore, counterparties to a covered entity in bankruptcy would be able to exercise their existing contractual default rights to the full extent permitted under any applicable safe harbor to the automatic stay of the U.S. Bankruptcy Code.

The final rule should also benefit the counterparties of a subsidiary of a failed GSIB by preventing the severe distress or disorderly failure of the subsidiary and allowing it to continue to meet its obligations. While it may be in the individual interest of any given counterparty to exercise any available rights to run on a subsidiary of a failed GSIB, the mass exercise of such rights could harm the counterparties' collective interest by causing an otherwise-solvent subsidiary to fail. Therefore, like the automatic stay in bankruptcy, which serves to maximize creditors' ultimate recoveries by preventing a disorderly liquidation of the debtor, the final rule seeks to mitigate this collective action problem to the benefit of the failed firm's creditors and counterparties by preventing a disorderly resolution. And because many creditors and counterparties of GSIBs are themselves systemically important financial firms, improving outcomes for those creditors and counterparties should further protect the financial stability of the United States.

General creditor protections. While the restrictions of the final rule are intended to facilitate orderly resolution, they may also diminish the ability of covered entities' QFC counterparties to include certain protections for themselves in covered QFCs, as noted by certain commenters. In order to reduce this effect, the final rule, like the proposal, includes several substantial exceptions to the restrictions.[180] These permitted creditor protections are intended to allow creditors to exercise cross-default rights outside of an orderly resolution of a GSIB (as described above) and therefore would not be expected to undermine such a resolution.

First, in order to ensure that the proposed prohibitions would apply only to cross-default rights (and not direct default rights), the final rule provides that a covered QFC may permit the exercise of default rights based on the direct party's entry into a resolution proceeding.[181] This provision helps to ensure that, if the direct party to a QFC were to enter bankruptcy, its QFC counterparties could exercise any relevant direct default rights. Thus, a covered entity's direct QFC counterparties would not risk the delay and expense associated with becoming involved in a bankruptcy proceeding and would be able to take advantage of default rights that would fall within the U.S. Bankruptcy Code's safe harbor provisions.

The final rule also allows covered QFCs to permit the exercise of default rights based on the failure of the direct party, a covered affiliate support provider, or a transferee that assumes a credit enhancement to satisfy its payment or delivery obligations under the direct QFC or credit enhancement.[182] Moreover, the final rule allows covered QFCs to permit the exercise of a default right in one QFC that is triggered by the direct party's failure to satisfy its payment or delivery obligations under another contract between the same parties.[183] This exception takes appropriate account of the interdependence that exists among the contracts in effect between the same counterparties.

As explained in the proposal, the exceptions in the final rule for the creditor protections described above are intended to help ensure that the final rule permits a covered entity's QFC

[178] *See* 12 U.S.C. 5365(d).

[179] *See* final rule § 252.84(d)(1).

[180] *See* final rule § 252.84(d).

[181] *See* final rule § 252.84(d)(1). The proposal exempted from this creditor protection provision proceedings under a U.S. or foreign special resolution regime. As explained in the proposal, special resolution regimes typically stay direct default rights, but may not stay cross-default rights. For example, as discussed above, the FDI Act stays direct default rights, *see* 12 U.S.C. 1821(e)(10)(B), but does not stay cross-default rights, whereas the Dodd-Frank Act's OLA stays direct default rights and cross-defaults arising from a parent's receivership, *see* 12 U.S.C. 5390(c)(10)(B) and 5390(c)(16). The proposed exemption of special resolution regimes from the creditor protection provisions was intended to help ensure that special resolution regimes that do not stay cross-defaults, such as the FDI Act, would not disrupt the orderly resolution of a GSIB under the U.S. Bankruptcy Code or other ordinary insolvency proceedings.

One commenter requested the Board revise this provision to clarify that default rights based on a covered entity or an affiliate entering resolution under the FDI Act or Title II of the Dodd-Frank Act are not prohibited but instead are merely subject to the terms of such regimes. The commenter requested the Board clarify that such default rights are permitted so long as they are subject to the provisions of the FDI Act or Title II of the Dodd-Frank Act as required under section 225.83. The final rule eliminates this proposed exemption for special resolution regimes because the rule separately addresses cross-defaults arising from the FDI Act and because foreign special resolution regimes, along with efforts in other jurisdictions to contractually recognize stays of default rights under those regimes, should reduce the risk that such a regime should pose to the orderly resolution of a GSIB under the U.S. Bankruptcy Code or other ordinary insolvency proceedings.

[182] *See* final rule § 252.84(d)(2)–(3). These provisions should respond to comments requesting that the final rule confirm the ability of a covered entity's counterparty to exercise default rights arising from the failure of a direct party to satisfy a payment or delivery obligation during the stay period. *But see* final rule § 252.83(c).

[183] *See* final rule § 252.84(d)(2).

counterparties to protect themselves from imminent financial loss and does not create a risk of delivery gridlocks or daisy-chain effects, in which a covered entity's failure to make a payment or delivery when due leaves its counterparty unable to meet its own payment and delivery obligations (the daisy-chain effect would be prevented because the covered entity's counterparty would be permitted to exercise its default rights, such as by liquidating collateral). These exceptions are generally consistent with the treatment of payment and delivery obligations under the U.S. Special Resolution Regimes.[184]

These exceptions also help to ensure that a covered entity's QFC counterparty would not risk the delay and expense associated with becoming involved in a bankruptcy proceeding, since, unlike a typical creditor of an entity that enters bankruptcy, the QFC counterparty would retain its ability under the U.S. Bankruptcy Code's safe harbors to exercise direct default rights. This should further reduce the counterparty's incentive to run. Reducing incentives to run in the period leading up to resolution promotes orderly resolution, since a QFC creditor run (such as a mass withdrawal of repo funding) could lead to a disorderly resolution and pose a threat to financial stability.

Additional creditor protections for supported QFCs. The final rule, like the proposal, allows the inclusion of additional creditor protections for a non-defaulting counterparty that is the beneficiary of a credit enhancement from an affiliate of the covered entity that is also a covered entity or excluded bank.[185] The final rule allows these creditor protections in recognition of the supported party's interest in receiving the benefit of its credit enhancement. These creditor protections would not undermine an SPOE resolution of a GSIB.

Where a covered QFC is supported by a covered affiliate credit enhancement,[186] the covered QFC and the credit enhancement would be permitted to allow the exercise of default rights under the circumstances discussed below after the expiration of a stay period. Under the final rule, the applicable stay period would begin when the credit support provider enters resolution and would end at the later of 5:00 p.m. (eastern time) on the next business day and 48 hours after the entry into resolution.[187] This portion of the final rule is similar to the stay treatment provided in a resolution under the OLA or the FDI Act.[188]

Under the final rule, contractual provisions may permit the exercise of default rights at the end of the stay period if the covered affiliate credit enhancement has not been transferred away from the covered affiliate support provider and that support provider becomes subject to a resolution proceeding other than a proceeding under Chapter 11 of the U.S. Bankruptcy Code.[189] QFCs may also permit the exercise of default rights at the end of the stay period if the transferee (if any) of the credit enhancement enters a resolution proceeding, protecting the supported party from a transfer of the credit enhancement to a transferee that is unable to meet its financial obligations.[190]

QFCs may also permit the exercise of default rights at the end of the stay period if the original credit support provider does not remain, and no transferee becomes, obligated to the same (or substantially similar) extent as the original credit support provider was obligated immediately prior to entering a resolution proceeding (including a Chapter 11 proceeding) with respect to (a) the covered affiliate credit enhancement, (b) all other covered affiliate credit enhancements provided by the credit support provider on any other covered QFCs between the same parties, and (c) all credit enhancements provided by the credit support provider between the direct party and affiliates of the direct party's QFC counterparty.[191] Such creditor protections are permitted in order to prevent the support provider or the transferee from ''cherry picking'' by assuming only those QFCs of a given counterparty that are favorable to the support provider or transferee. Title II of the Dodd-Frank Act and the FDI Act contain similar provisions to prevent cherry picking.

Finally, if the covered affiliate credit enhancement is transferred to a transferee, the QFC may permit the non-defaulting counterparty to exercise default rights at the end of the stay period unless either (a) all of the covered affiliate support provider's ownership interests in the direct party are also transferred to the transferee or (b) reasonable assurance is provided that substantially all of the covered affiliate support provider's assets (or the net proceeds from the sale of those assets) will be transferred or sold to the transferee in a timely manner.[192] These conditions help to assure the supported party that the transferee would be at least roughly as financially capable of providing the credit enhancement as the covered affiliate support provider. Title II of the Dodd-Frank Act similarly requires that certain conditions be met with respect to affiliate credit enhancements.[193]

Commenters generally expressed strong support for these exclusions but also requested that these exclusions be broadened in a number of ways. Certain commenters urged the Board to broaden the exclusions to permit, after trigger of the stay-and-transfer provisions, the exercise of default rights by a counterparty against a direct counterparty or covered support provider with respect to any default right under the QFC (other than a default right explicitly based on the failure of an affiliate) and not just with respect to defaults resulting from payment or delivery failure or the direct party becoming subject to certain resolution or insolvency proceedings (*e.g.,* failure to maintain a license or certain capital level, materially breaching its representations under the QFC). Certain commenters contended that, at a minimum, the final rule should provide for creditor protections that meet the minimum standards set forth by the Universal Protocol. One commenter specifically identified three creditor protections found in the Universal Protocol that it argued the Board should include in section 252.84: (1) Priority rights in a bankruptcy proceeding against the transferee or original credit support provider (if the QFC providing credit support was not transferred); (2) a right to submit claims in the insolvency proceeding of the insolvent credit support provider if the transferee becomes insolvent; and (3) the ability to declare a default and close

[184] *See* 12 U.S.C. 1821(e)(8)(G)(ii), 5390(c)(8)(F)(ii) (suspending payment and delivery obligations for one business day or less).

[185] *See* final rule § 252.84(f).

[186] Note that the exception in section 252.84(f) of the final rule would not apply with respect to credit enhancements that are not covered affiliate credit enhancements. In particular, it would not apply with respect to a credit enhancement provided by a non-U.S. entity of a foreign GSIB, which would not be a covered entity or excluded bank under the final rule. *See* final rule § 252.84(e)(2) (defining ''covered affiliate credit enhancement'').

[187] *See* final rule § 252.84(g)(1).

[188] *See* 12 U.S.C. 1821(e)(10)(B)(I), 5390(c)(10)(B)(i), 5390(c)(16)(A). While the final rule's stay period is similar to the stay periods that would be imposed by the U.S. Special Resolution Regimes, it could run longer than those stay periods under some circumstances.

[189] *See* final rule § 252.84(f)(1). Chapter 11 (11 U.S.C. 1101–1174) is the portion of the U.S. Bankruptcy Code that provides for the reorganization of the failed company, as opposed to its liquidation, and is generally well-understood by market participants.

[190] *See* final rule § 252.84(f)(2).

[191] *See* final rule § 252.84(f)(3).

[192] *See* final rule § 252.84(f)(4).

[193] *See* 12 U.S.C. 5390(c)(16)(A).

out of both the original QFC with the direct counterparty as well as QFCs with the transferee if the transferee defaults under the transferred QFC or under any other QFC with the non-defaulting counterparty, subject to the contractual terms and consistent with applicable law. Another commenter argued for creditor protections not found in the Universal Protocol, including that the transferee be required to be a U.S. person and be registered with and licensed by the primary regulator of either the direct counterparty or transferor entity.

The final rule does not include the additional creditor protections of the Universal Protocol or other creditor protections requested by commenters. As explained in the proposal and below, the additional creditor protections of the Universal Protocol do not appear to materially diminish the prospects for an orderly resolution of a GSIB because the Universal Protocol includes a number of desirable features that the final rule otherwise lacks.[194] Providing additional circumstances under which default rights may be exercised during and immediately after the stay period, in the absence of any counterbalancing benefits to resolution, would increase the risk of a disorderly resolution of a GSIB in contravention of the purposes of the rule.

One commenter also argued that transfer should be limited to a bridge bank under the FDI Act or a bridge financial company under Title II of the Dodd-Frank Act to ensure that the transferee is more likely to be able to satisfy the obligations of a credit support provider and is subject to regulatory oversight. Section 252.84 of the final rule permits QFCs to include provisions allowing a counterparty to exercise its default rights against a direct party that enters resolution under the FDI Act or Title II of the Dodd-Frank Act, other than the limited case contemplated by section 252.84(h) of the final rule. The Board is not adopting the proposed additional creditor protection because it would defeat in large part the purpose of section 252.84 and potentially create confusion regarding the requirements and purposes of sections 252.83 and 252.84 of the final rule.[195]

A few commenters expressed concern that the additional creditor protections applied only to QFCs supported by a credit enhancement provided by a ''covered affiliate support provider'' (*i.e.,* an affiliate that is a covered entity) and noted that foreign GSIBs often will have their QFCs supported by a non-U.S. affiliate that is not a covered entity. Such non-U.S. affiliate credit supporter providers would not be able to rely on the additional creditor protections for supported QFCs. As the proposal explained, ''Such credit enhancements [are] excluded in order to help ensure that the resolution of a non-U.S. entity would not negatively affect the financial stability of the United States by allowing for the exercise of default rights against a covered entity.'' [196]

One commenter requested clarification that the creditors of a non-U.S. credit support provider are permitted to exercise any and all rights against that non-U.S. credit support provider that they could exercise under the non-U.S. resolution regime applicable to that non-U.S. credit support provider. In general, covered entities may be entities organized or operating in the United States or, with respect to U.S. GSIBs, abroad. The final rule, like the proposal, is limited to QFCs to which a covered entity is a party. Section 252.84 of the final rule generally prohibits QFCs to which a covered entity is a party from allowing the exercise of cross-default rights of the covered QFC, regardless of whether the affiliate entering resolution and/or the credit support provider is organized or operates in the United States.

Another commenter expressed concern that the proposed section 252.84(g)(3) (section 252.84(f)(3) of the final rule) would provide a right without a remedy because, if the covered affiliate credit support provider is no longer obligated and no transferee has taken on the obligation, the non-covered entity counterparty may have only a breach of contract claim against an entity that has transferred all of its assets to a third party. The creditor protections of section 252.84, if triggered, permit contractual provisions allowing the exercise of existing default rights against the direct party to the covered QFC, as well as any existing rights against the credit enhancement provider.

Another commenter suggested revising section 252.84(g) (section 252.84(f) of the final rule) to clarify that, for a covered direct QFC supported by a covered affiliate credit enhancement, the covered direct QFC and the covered affiliate credit enhancement may permit the exercise of a default right after the stay period that is related, directly or indirectly, to the covered affiliate support provider entering into resolution proceedings. This reading is incorrect and revising the rule as requested would largely defeat the purpose of section 252.84 of the final rule by merely delaying QFC termination en masse.

Some commenters also requested specific provisions related to physical commodity contracts, including a provision that would allow regulators to override a stay if necessary to avoid disruption of the supply or prevent exacerbation of price movements in a commodity or a provision that would allow the exercise of default rights of counterparties delivering or taking delivery of physical commodities if a covered entity defaults on any physical delivery obligation to any counterparty. As noted above, QFCs may permit a counterparty to exercise its default rights immediately, even during the stay period, if the covered entity fails to pay or perform on the covered QFC with the counterparty (or another contract between the same parties that gives rise to a default under the covered QFC).

Creditor protections related to FDI Act proceedings. In the case of a covered QFC that is supported by a covered affiliate credit enhancement, both the covered QFC and the credit enhancement would be permitted to allow the exercise of default rights related to the credit support provider's entry into resolution proceedings under the FDI Act [197] only under the following circumstances: (a) After the FDI Act stay period,[198] if the credit enhancement is not transferred under the relevant provisions of the FDI Act [199] and associated regulations, and (b) during the FDI Act stay period, to the extent

[194] *See* 81 FR 29169, 29182 (May 11, 2016).

[195] To the extent the commenter's reference to ''bridge financial company'' was not only to a bridge financial company under Title II of the Dodd-Frank Act, the requested amendment would not appear to provide a meaningful reduction in credit risk to counterparties compared to the creditor protections permitted under section 252.84 of the final rule and those available under the Universal Protocol and U.S. Protocol, discussed below.

[196] 81 FR 29169, 29180 n.92 (May 11, 2016) (''Note that the exception in § 252.84(g) of the proposed rule would not apply with respect to credit enhancements that are not covered affiliate credit enhancements. In particular, it would not apply with respect to a credit enhancement provided by a non-U.S. entity of a foreign GSIB, which would not be a covered entity under the proposal. Such credit enhancements would be excluded in order to help ensure that the resolution of a non-U.S. entity would not negatively affect the financial stability of the United States by allowing for the exercise of default rights against a covered entity.''). *See also* final rule § 252.84(f).

[197] As discussed above, the FDI Act stays direct default rights against the failed depository institution but does not stay the exercise of cross-default rights against its affiliates.

[198] Under the FDI Act, the relevant stay period runs until 5:00 p.m. (eastern time) on the business day following the appointment of the FDIC as receiver. 12 U.S.C. 1821(e)(10)(B)(I). *See also* final rule § 252.81.

[199] 12 U.S.C. 1821(e)(9)–(10).

that the default right permits the supported party to suspend performance under the covered QFC to the same extent as that party would be entitled to do if the covered QFC were with the credit support provider itself and were treated in the same manner as the credit enhancement.[200] This provision is intended to ensure that a QFC counterparty of a subsidiary of a bank that goes into FDI Act receivership can receive the same level of protection that the FDI Act provides to QFC counterparties of the bank itself. No comments were received on this aspect of the proposal and the final rule contains no changes from the proposal.

Prohibited terminations. In case of a legal dispute as to a party's right to exercise a default right under a covered QFC, the final rule, like the proposal, requires that a covered QFC must provide that, after an affiliate of the direct party has entered a resolution proceeding, (a) the party seeking to exercise the default right bears the burden of proof that the exercise of that right is indeed permitted by the covered QFC, and (b) the party seeking to exercise the default right must meet a ''clear and convincing evidence'' standard, a similar standard,[201] or a more demanding standard.[202] The purpose of this requirement is to deter the QFC counterparty of a covered entity from thwarting the purpose of the final rule by exercising a default right because of an affiliate's entry into resolution under the guise of other default rights that are unrelated to the affiliate's entry into resolution.

A few commenters requested guidance on how to satisfy the burden of proof of clear and convincing evidence so that they may avoid seeking such clarity through litigation. Other commenters urged that this standard was not appropriate and should be eliminated. In particular, a number of commenters expressed concern that the burden of proof requirements, which are more stringent than the burden of proof requirements for typical contractual disputes adjudicated in a court, unduly hamper the creditor protections of counterparties and impose a burden directly on non-covered entities, who should be able to exercise default rights if it is commercially reasonable in the context. One commenter contended that this burden, combined with the stay on default rights related ''indirectly'' to an affiliate entering insolvency proceedings, effectively prohibits counterparties from exercising any default rights during the stay period. These commenters argued that it is inappropriate for the Board in a rulemaking to alter the burden of proof for contractual disputes. One commenter suggested that, in a scenario involving a master agreement with some transactions out of the money and others in the money, the defaulting GSIB will have a lower burden of proof for demonstrating that it is owed money than for demonstrating that it owes money, should the non-GSIB counterparty exercise its termination rights. Certain commenters suggested instead that the final rule shift the burden and instead adopt a rebuttable presumption that the non-defaulting counterparty's exercise of default rights is permitted under the QFC unless the defaulting covered entity demonstrates otherwise. One commenter requested that the burden of proof not apply to the exercise of direct default rights.

The final rule retains the proposed burden of proof requirements. The requirement is based on a primary goal of the final rule—to avoid the disorderly termination of QFCs in response to the failure of an affiliate of a GSIB. The requirement accomplishes this goal by making clear that a party that exercises a default right when an affiliate of its direct party enters receivership of insolvency proceedings is unlikely to prevail in court unless there is clear and convincing evidence that the exercise of the default right against a covered entity is not related to the insolvency or resolution proceeding. The requirement therefore should discourage the impermissible exercise of default rights without prohibiting the exercise of all default rights. Moreover, the burden of proof requirement should not discourage the exercise of default rights after or in response to a failure to satisfy a creditor protection provision (*e.g.,* direct default rights); such a failure should be easily evidenced, even under a heightened burden of proof, such that clarification through court proceedings should not be necessary.

Agency transactions. In addition to entering into QFCs as principals, GSIBs may engage in QFCs as agent for other principals. For example, a GSIB subsidiary may enter into a master securities lending arrangement with a foreign bank as agent for a U.S.-based pension fund. The GSIB would document its role as agent for the pension fund, often through an annex to the master agreement, and would generally provide to its customer (the principal party) a securities replacement guarantee or indemnification for any shortfall in collateral in the event of the default of the foreign bank.[203] A covered entity may also enter into a QFC as principal where there is an agent acting on its behalf or on behalf of its counterparty.

This proposal would have applied to a covered QFC regardless of whether the covered entity or the covered entity's direct counterparty is acting as a principal or as an agent. Sections 252.83 and 252.84 of the proposal did not distinguish between agents and principals with respect to default rights or transfer restrictions applicable to covered QFCs. Under the proposal, section 252.83 would have limited default rights and transfer restrictions that the principal and its agent may have against a covered entity consistent with the U.S. Special Resolution Regimes.[204] Section 252.84 of the proposed rule would have ensured that, subject to the enumerated creditor protections, neither the agent nor the principal could exercise cross-default rights under the covered QFC against the covered entity based on the resolution of an affiliate of the covered entity.[205]

Commenters argued that the provisions of sections 252.83 and 252.84 that relate to transactions entered into by the covered entity as agent should exclude QFCs where the covered entity or its affiliate does not have any liability (including contingent liability) under or in connection with the contract, or any payment or delivery obligations with respect thereto. Commenters also argued that the proposed agent provisions should not apply to circumstances where the covered entity acts as agent for a counterparty whose transactions are excluded from the requirements of the rule.[206] Commenters provided as an example where an agent simply executes an agreement on behalf of the principal but bears no liability thereunder, such as where an investment manager signs an agreement on behalf of a client. Commenters noted that such agreements could contain events of default relating to the

[200] *See* final rule § 252.84(h).

[201] The reference to a ''similar'' burden of proof is intended to allow covered QFCs to provide for the application of a standard that is analogous to clear and convincing evidence in jurisdictions that do not recognize that particular standard. A covered QFC is not permitted to provide for a lower standard.

[202] *See* final rule § 252.84(i).

[203] The definition of QFC under Title II of the Dodd-Frank Act, which is adopted in the final rule, includes security agreements and other credit enhancements as well as master agreements (including supplements). 12 U.S.C. 5390(c)(8)(D); *see also* final rule § 252.81.

[204] *See* proposed rule § 252.83(a)(3).

[205] *See* proposed rule §§ 252.84(a)(3), 252.84(d).

[206] Commenters argued this should be the case even where an agent has entered an umbrella master agreement on behalf of more than one principal, but only with respect to the contract of any principals that are excluded counterparties.

insolvency of the agent or an affiliate of the agent but that such default rights would be difficult to track and that close-out of such QFCs would not result in any loss or liquidity impact to the agent. Rather, early termination under the agreements would subject the cash and securities of the principals—not the agent—to realization and liquidation. Therefore, the agent would not be exposed to the liquidity and asset fire sale risks the proposal was intended to address.

Commenters contended that the requirement to conform QFCs with all affiliates of a counterparty when an agent is acting on behalf of the counterparty would be particularly burdensome, as the agent may not have information about the counterparty's affiliates or their contracts with covered entities. Commenters also requested clarification that conformance is not required of contracts between a covered entity as agent on behalf of a non-U.S. affiliate of a foreign GSIB that would not be a covered entity under the proposal, since default rights related to the non-U.S. operations of foreign GSIBs are not the focus of the rule and do not bear a sufficient connection to U.S. financial stability to warrant the burden and cost of compliance.

One commenter also urged that securities lending authorization agreements (SLAAs) should also be exempt from the rule. The commenter explained that SLAAs are banking services agreements that establish an agency relationship with the lender of securities and an agent and may be considered credit enhancements for securities lending transactions (and therefore QFCs) because the SLAAs typically require the agent to indemnify the lender for any shortfall between the value of the collateral and the value of the securities in the event of a borrower default. The commenter explained that SLAAs typically do not contain provisions that may impede the resolution of a GSIB, but may contain termination rights or contractual restrictions on assignability. However, the commenter argued that the beneficiaries under SLAAs lack the incentive to contest the transfer of the SLAA to a bridge institution in the event of GSIB insolvency.

To respond to concerns raised by commenters, the agency provisions of the proposed rule have been modified in the final rule. The final rule provides that a covered entity does not become a party to a QFC solely by acting as agent to a QFC.[207] Therefore, an in-scope QFC would not be a covered QFC solely because a covered entity was acting as the agent of a principal with respect to the QFC.[208] For example, the final rule would not require a covered entity to conform a master securities lending arrangement (or the transactions under the agreement) to the requirements of the final rule if the only obligations of the covered entity under the agreement are to act as an agent on behalf of one or more principals. This modification should address many of the concerns raised by commenters.

The final rule does not specifically exempt SLAAs because the agreements provide the beneficiaries with contractual rights that may hinder the orderly resolution of a GSIB and because it is unclear how such beneficiaries would act in response to the failure of their agent. More generally, the final rule does not exempt a QFC with respect to which an agent also acts in another capacity, such as guarantor. Continuing the example regarding the covered entity acting as agent with respect to a master securities lending agreement, if the covered entity also provided a SLAA that included the typical indemnification provision discussed above, the agency exemption of the final rule would not exclude the SLAA but would still exclude the master securities lending agreement. This is because the covered entity is acting solely as agent with respect to the master securities lending agreement but is acting as agent and guarantor with respect to the SLAA. However, SLAAs would be exempted under the final rule to the extent that they are not ''in-scope QFCs'' or otherwise meet the exemptions for covered QFCs of the final rule.

Enforceability. Commenters also requested that the final rule should clarify that obligations under a QFC would still be enforceable even if its terms do not comply with the requirements of the final rule, similar to assurances provided in respect of the UK rule and German legislation. The enforceability of a contract is beyond the scope of this rule.

Interaction with Other Regulatory Requirements. Certain commenters requested clarification that amending covered QFCs as required by this final rule should not trigger other regulatory requirements for covered entities, such as the swap margin requirements issued by the Board, other prudential regulators (the OCC, FDIC, Farm Credit Administration, and Federal Housing Financing Agency), and the U.S. Commodity Futures Trading Commission (CFTC). In particular, commenters urged that amending a swap to conform to this final rule should not jeopardize the status of the swap as a legacy swap for purposes of the swap margin requirements for non-cleared swaps. These issues are outside the scope of this rule as they relate to the requirements of another rule issued by the Board jointly with the other prudential regulators, as well as a rule issued by the CFTC. As commenters pointed out, addressing such issues may require consultation with the other prudential regulators as well as the CFTC and the U.S. Securities and Exchange Commission to determine the impact of the amendments required by this final rule for purposes of the regulatory requirements under Title VII. However, as the proposal noted, the Board is considering an amendment to the definition of ''eligible master netting agreement'' to account for the restrictions on covered QFCs and is consulting with the other prudential regulators and the CFTC on this aspect of the final rule.[209] The Board does not expect that compliance with this final rule would trigger the swap margin requirements for non-cleared swaps.

Compliance with the Universal and U.S. Protocols. The final rule, like the proposal, allows covered entities to conform covered QFCs to the requirements of the proposed rule through adherence to the Universal Protocol.[210] The two primary operative provisions of the Universal Protocol are Section 1 and Section 2. Under Section 1, adhering parties essentially ''opt in'' to the U.S. Special Resolution Regimes and certain other special resolution regimes. Therefore, Section 1 is generally responsive to the concerns addressed in section 252.83 of the final rule. Under Section 2, adhering parties essentially forego, subject to the creditor protections of Section 2, cross-default rights and transfer restrictions on affiliate credit enhancements. Therefore, Section 2 is generally responsive to the concerns addressed in section 252.84 of the final rule.

The proposal noted that, while the scope of the stay-and-transfer provisions of the Universal Protocol are narrower than the stay-and-transfer provisions that would have been required under the proposal and the Universal Protocol provides a number of creditor protection provisions that would not otherwise have been available under the proposal, the Universal Protocol includes a

[207] *See* final rule § 252.82(e)(1).

[208] Such a QFC would nonetheless be a covered QFC with respect to a principal that also was a covered entity. In response to comments, the Board notes that covered entities do not include non-U.S. subsidiaries of a foreign GSIB.

[209] *See* 81 FR 29169, 29186 (May 11, 2016).

[210] *See* final rule § 252.85(a).

number of desirable features that the proposal lacked. The proposal explained that ''when an entity (whether or not it is a covered entity) adheres to the [Universal] Protocol, it necessarily adheres to the [Universal] Protocol with respect to all covered entities that have also adhered to the Protocol rather than one or a subset of covered entities (as the proposal may otherwise permit). . . . This feature appears to allow the [Universal] Protocol to address impediments to resolution on an industry-wide basis and increase market certainty, transparency, and equitable treatment with respect to default rights of non-defaulting parties.'' [211] This feature is referred to as ''universal adherence.'' The proposal explained that other favorable features of the Universal Protocol included that it amends all existing transactions of adhering parties, does not provide the counterparty with default rights in addition to those provided under the underlying QFC, applies to all QFCs, and includes resolution under bankruptcy as well as U.S. and certain non-U.S. Special Resolution Regimes. Because the features of the Universal Protocol, considered together, appeared to increase the likelihood that the resolution of a GSIB under a range of scenarios could be carried out in an orderly manner, the proposal stated that QFCs amended by the Universal Protocol would have been consistent with the proposal, notwithstanding differences from section 252.84 of the proposal.

Commenters generally supported the proposal's provisions to allow covered entities to comply with the requirements of the proposed rule through adherence to the Universal Protocol. For the reasons discussed above and in the proposal, the final rule continues to allow covered entities to comply with the rule through adherence to the Universal Protocol and makes other modifications to the proposal to address comments.

A few commenters requested that the final rule clarify two technical aspects of adherence to the Universal Protocol. These commenters requested confirmation that adherence to the Universal Protocol would also satisfy the requirements of section 252.83. The commenters also requested confirmation that QFCs that incorporate the terms of the Universal Protocol by reference also would be deemed to comply with the terms of the proposed alternative method of compliance.[212] By clarifying section 252.85(a), the final rule confirms that adherence to the Universal Protocol is deemed to satisfy the requirements of section 252.83 of the final rule (as well as section 252.84) and that conformance of a covered QFC through the Universal Protocol includes incorporation of the terms of the Universal Protocol by reference by protocol adherents. This clarification also applies to the U.S. Protocol, discussed below.

One commenter indicated that many non-covered entity counterparties do not have ISDA master agreements for physically-settled forward and commodity contracts and, therefore, compliance with the rule's requirements through adherence to the Universal Protocol would entail substantial time and educational effort. As in the proposal, the final rule simply permits adherence to the Universal Protocol as one method of compliance with the rule's requirements, and parties may meet the rule's requirements through bilateral negotiation, if they choose. Moreover, the Securities Financing Transaction Annex and Other Agreements Annex of the Universal Protocol, which are specifically identified in the proposed and final rule, are designed to amend QFCs that are not ISDA master agreements.

Many commenters argued that the final rule should also allow compliance with the rule through a yet-to-be-created ''U.S. Jurisdictional Module to the ISDA Resolution Stay Jurisdictional Modular Protocol'' (an ''approved U.S. JMP'') that is generally the same but narrower in scope than the Universal Protocol.[213] Many non-GSIB commenters argued that they were not involved with the drafting of the Universal Protocol and that an approved U.S. JMP would create a level playing field between those that were involved in the drafting and those that were not. In general, commenters identified two aspects of the Universal Protocol that they argued should be narrowed in the approved U.S. JMP: The scope of the special resolution regimes and the universal adherence feature of the Universal Protocol.

With respect to the scope of the special resolution regimes of the Universal Protocol, commenters' concern focused on the special resolution regimes of ''Protocol-eligible Regimes.'' Some commenters also expressed concern with the scope of ''Identified Regimes'' of the Universal Protocol.

The Universal Protocol defines ''Identified Regimes'' as the special resolution regimes of France, Germany, Japan, Switzerland, and the United Kingdom, as well as the U.S. Special Resolution Regimes. The Universal Protocol defines ''Protocol-eligible Regimes'' as resolution regimes of other jurisdictions specified in the protocol that satisfies the requirements of the Universal Protocol. The Universal Protocol provides a ''Country Annex,'' which is a mechanism by which individual adherents to the Universal Protocol may agree that a specific jurisdiction satisfies the requirements of a ''Protocol-eligible Regime.'' The Universal Protocol referred to in the proposal did not include any Country Annex for any Protocol-eligible Regime.[214]

Commenters requested the final rule include a safe harbor for an approved U.S. JMP that does not include Protocol-eligible Regimes. Commenters argued that many counterparties may not be able to adhere to the Universal Protocol because they would not be able to adhere to a Protocol-eligible Regime in the absence of law or regulation mandating such adherence, as it would

[211] 81 FR 29169, 29182–83 (May 11, 2016).

[212] ''As between two Adhering Parties, the [Universal Protocol] only amends agreements between the Adhering Parties that have been entered into as of the date that the Adhering Parties adhere (as well as any subsequent transactions thereunder), but it does not amend agreements that Adhering Parties enter into after that date. . . . If Adhering Parties wish for their future agreements to be subject to the terms of the [Universal Protocol] or a Jurisdictional Module Protocol under the ISDA JMP, it is expected that they would incorporate the terms of the [relevant protocol] by reference into such agreements.'' Letter to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, from Katherine T. Darras, ISDA General Counsel, The International Swaps and Derivatives Association, Inc., at 8–9 (Aug. 5, 2016). This commenter noted that incorporation by reference was consistent with the proposal and asked that the text of the rule be clarified. *Id.* at 9.

[213] Commenters argued that approval of the approved U.S. JMP should not require satisfaction of the administrative requirements of section 252.85(b)(3), since the Board has already conducted that analysis in deciding to provide a safe harbor for the Universal Protocol.

[214] The proposal defined the Universal Protocol as the ''ISDA 2015 Universal Resolution Stay Protocol, including the Securities Financing Transaction Annex and Other Agreements Annex, published by the International Swaps and Derivatives Association, Inc., as of May 3, 2016, and minor or technical amendments thereto.'' *See* proposed rule § 252.85(a). As of May 3, 2016, ISDA had not published any Country Annex for a Protocol-eligible Regime and such publication would not be a minor or technical amendment to the Universal Protocol. Consistent with the proposal, the final rule does not define the Universal Protocol to include any Country Annex. However, the final rule does not penalize adherence to any Country Annex. A covered QFC that is amended by the Universal Protocol—but not a Country Annex—will be deemed to conform to the requirements of the final rule. In addition, a covered QFC that is amended by the Universal Protocol—including one or more Country Annexes—is also deemed to conform to the requirements of the final rule. *See* final rule § 252.85(a)(2).

force counterparties to give up default rights in jurisdictions where that is not yet legally required.[215] In support of their argument, commenters cited their fiduciary duties to act in the best interests of their clients or shareholders. Commenters also argued that an approved U.S. JMP should not include Identified Regimes and noted that the other Identified Regimes have already adopted measures to require contractual recognition of their special resolution regimes.[216]

With respect to the universal adherence feature of the Universal Protocol, commenters argued that universal adherence imposed significant monitoring burden since new adherents may join the Universal Protocol at any time. To address this concern, some commenters requested that an approved U.S. JMP allow a counterparty to adhere on a firm-by-firm or entity-by-entity basis. Other commenters suggested, or supported approval of, an approved U.S. JMP in which a counterparty would adhere to all current covered entities under the final rule (to be identified on a ''static list'') and would adhere to new covered entities on an entity-by-entity basis. This static list, commenters argued, would retain the ''universal adherence mechanics'' of the Universal Protocol and allow market participants to fulfill due diligence obligations related to compliance. Commenters also argued that universal adherence would be overbroad because the Universal Protocol could amend QFCs to which a covered entity or excluded bank was not a party. Certain commenters argued that adhering with respect to any counterparty would also be inconsistent with their fiduciary duties.

In response to comments and to further facilitate compliance with the rule, the final rule provides that covered QFCs amended through adherence to the Universal Protocol or a new (and separate) protocol (the ''U.S. Protocol'') would be deemed to conform the covered QFCs to the requirements of the final rule.[217] The U.S. Protocol may differ from the Universal Protocol in certain respects, as discussed below, but otherwise must be substantively identical to the Universal Protocol.[218] Therefore, the reasons for deeming covered QFCs amended by the Universal Protocol to conform to the final rule, discussed above and in the proposal, apply to the U.S. Protocol.

Consistent with the proposal[219] and requests by commenters, the U.S. Protocol may limit the application of the provisions the Universal Protocol identifies as Section 1 and Section 2 to only covered entities and excluded banks.[220] As requested by commenters, this limitation on the scope of the U.S. Protocol may ensure that the U.S. Protocol would only amend covered QFCs under this final rule or the substantively identical final rules expected to be issued by the OCC and FDIC and not also QFCs outside the scope of the agencies' final rules (*i.e.,* QFCs between parties that are not covered entities or excluded banks).

The final rule also provides that the U.S. Protocol is required to include the U.S. Special Resolution Regimes and the other Identified Regimes but is not required to include Protocol-eligible Regimes.[221] As noted above, the Universal Protocol, as defined in the proposal, did not include any Country Annex for a Protocol-eligible Regime; the only special resolution regimes specifically identified in the Universal Protocol, as defined in the proposal, were the U.S. Special Resolution Regimes and the other Identified Regimes. As explained in the proposal, inclusion of the Identified Regimes should help facilitate the resolution of a GSIB across a broader range of circumstances.[222] Inclusion of the Identified Regimes in the U.S. Protocol also should support laws and regulations similar to the final rule and help encourage GSIB entities in the United States to adhere to a protocol that includes all Identified Regimes. However, the final rule does not require the U.S. Protocol to include Protocol-eligible Regimes, including definitions and adherence mechanisms related to Protocol-eligible Regimes.[223] Inclusion of only the Identified Regimes in the U.S. Protocol, considered in light of the other benefits to the resolution of GSIBs provided by the Universal Protocol and U.S. Protocol as well as commenters' concerns with potential adherence to Protocol-eligible Regimes, should sufficiently advance the objective of the final rule to increase the likelihood that a resolution of a GSIB could be carried out in an orderly manner under a range of scenarios.

The U.S. Protocol does not permit parties to adhere on a firm-by-firm or entity-by-entity basis because such adherence mechanisms requested by commenters would obviate one of the primary benefits of the Universal Protocol: Universal adherence. Similarly, the final rule does not permit adherence to a ''static list'' of all current covered entities, which other commenters requested.[224] Although the static list would initially provide for universal adherence, the static list would not provide for universal adherence with respect to entities that became covered entities after the static list was finalized. To help ensure that the additional creditor protections of the Universal Protocol and U.S. Protocol continue to be justified, both protocols must ensure that the desirable features of the protocols, including universal adherence, continue to be present as GSIBs acquire subsidiaries with existing QFCs and existing organizations become designated as GSIBs.

The final rule also addresses provisions that allow an adherent to elect that Section 1 and/or Section 2 of the Universal Protocol do not apply to the adherent's contracts.[225] The Universal Protocol refers to these

[215] The Protocol-eligible Regime requirements of the Universal Protocol do not include a requirement that a law or regulation, such as the final rule, require parties to contractually opt in to the regime.

[216] One commenter requested clarification that a QFC of a covered entity with a non-U.S. credit support provider for the covered entity complies with the requirements of the final rule to the extent the covered entity has adhered to the relevant jurisdictional modular protocol for the jurisdiction of the non-U.S. credit support provider. The jurisdictional modular protocols for other counties do not satisfy the requirements of the final rule.

[217] The final rule also provides that the Board may determine otherwise based on specific facts and circumstances. *See* final rule § 252.85(a).

[218] Commenters expressed support for having the U.S. Protocol apply to both existing and future QFCs. One commenter requested that an approved U.S. JMP should apply only to QFCs governed by non-U.S. law because the U.S. Special Resolution Regimes already apply to QFCs governed by U.S. law. As discussed above, the final rule does not exempt a QFC solely because the QFC explicitly states that is governed by U.S. law. Moreover, such a limited application would reduce the desirable additional benefits of the Universal Protocol, discussed above.

[219] The proposal explained that a ''jurisdictional module for the United States that is substantively identical to the [Universal] Protocol in all respects aside from exempting QFCs between adherents that are not covered entities or covered banks would be consistent with the current proposal.'' 81 FR 29169, 29181 n.106 (May 11, 2016).

[220] The final rule does not require the U.S. Protocol to retain the same section numbering as the Universal Protocol. The final rule allows the U.S. protocol to have minor and technical differences from the Universal Protocol. *See* final rule § 252.85(a)(3)(ii)(F).

[221] *See* final rule § 252.85(a)(3)(ii)(A). The U.S. Protocol is likewise not required to include definitions and adherence mechanisms related to Protocol-eligible Regimes. The final rule allows the U.S. Protocol to include minor and technical differences from the Universal Protocol and, similarly, differences necessary to conform the U.S. Protocol to the substantive differences allowed or required from the Universal Protocol. *See* final rule § 252.85(a)(3)(ii)(E).

[222] 81 FR 29169, 29183 (May 11, 2016).

[223] *See* final rule § 252.85(a)(3)(ii)(A).

[224] The final rule, however, does not prohibit the creation of a dynamic list identifying of all current ''Covered Parties,'' as would be defined in the U.S. Protocol, to facilitate due diligence and provide additional clarity to the market. *See* final rule § 252.85(a)(2)(ii)(E) (allowing minor and technical differences from the Universal Protocol).

[225] Section 4(b) of the Universal Protocol.

provisions as ''opt-outs.'' The proposal explained that adherence to the Universal Protocol was an alternative method of compliance with the proposed rule and that covered QFCs that were not amended by the Universal Protocol must otherwise conform to the proposed rule. In other words, the proposal would have required that a covered QFC be conformed regardless of the method the covered entity and counterparty chooses to conform the QFC.[226]

Consistent with the basic purposes of the proposed and final rules, the U.S. Protocol requires that opt-outs exercised by its adherents will only be effective to the extent that the affected covered QFCs otherwise conform to the requirements of the final rule. Therefore, the U.S. Protocol allows counterparties to exercise available opt-out rights in a manner that also allows covered entities to ensure that their covered QFCs continue to conform to the requirements of the rule.

The final rule also provides that, under the U.S. Protocol, the opt-out in Section 4(b)(i)(A) of the attachment to the Universal Protocol (Sunset Opt-out) [227] must not apply with respect to the U.S. Special Resolution Regimes because the opt-out is no longer relevant with respect to the U.S. Special Resolution Regimes. This final rule, along with the substantively identical rules expected to be issued by the FDIC and OCC, should prevent exercise of the Sunset Opt-out with respect to the U.S. Special Resolution Regimes under the Universal Protocol. Inapplicability of this opt-out with respect to U.S. Special Resolution Regimes in the U.S. Protocol should provide additional clarity to adherents that the U.S. Protocol will continue to provide for universal adherence after January 1, 2018.

The final rule also expressly addresses a provision in the Universal Protocol that concerns the client-facing leg of a cleared transaction. As discussed above, the final rule, like the proposal, does not exempt the client-facing leg of a cleared transaction. Therefore, the U.S. Protocol must not include the exemption in Section 2 of the Universal Protocol regarding the client-facing leg of the transaction.[228]

F. Process for Approval of Enhanced Creditor Protections (Section 252.85 of the Final Rule)

As discussed above, the restrictions of the final rule leaves many creditor protections that are commonly included in QFCs unaffected. The final rule also allows any covered entity to submit to the Board a request to approve as compliant with the rule one or more QFCs that contain additional creditor protections—that is, creditor protections that would be impermissible under the restrictions set forth above.[229] A covered entity making such a request would be required to provide an analysis of the contractual terms for which approval is requested in light of a range of factors that are set forth in the final rule and intended to facilitate the Board's consideration of whether permitting the contractual terms would be consistent with the proposed restrictions.[230] The Board also expects to consult with the FDIC and OCC during its consideration of such a request.

The first two factors concern the potential impact of the requested creditor protections on GSIB resilience and resolvability. The next four concern the scope of the final rule: Adoption on an industry-wide basis, coverage of existing and future transactions, coverage of one or multiple QFCs, and coverage of some or all covered entities. Creditor protections that may be applied on an industry-wide basis may help to ensure that impediments to resolution are addressed on a uniform basis, which could increase market certainty, transparency, and equitable treatment. Creditor protections that apply broadly to a range of QFCs and covered entities would increase the chances that all of a GSIB's QFC counterparties would be treated the same way during a resolution of that GSIB and may improve the prospects for an orderly resolution of that GSIB. By contrast, proposals that would expand counterparties' rights beyond those afforded under existing QFCs would conflict with the proposal's goal of reducing the risk of mass unwinds of GSIB QFCs. The final rule also includes three factors that focus on the creditor protections specific to supported parties. The Board may weigh the appropriateness of additional protections for supported QFCs against the potential impact of such provisions on the orderly resolution of a GSIB.

In addition to analyzing the request under the enumerated factors, a covered entity requesting that the Board approve enhanced creditor protections would be required to submit a legal opinion stating that the requested terms would be valid and enforceable under the applicable law of the relevant jurisdictions, along with any additional relevant information requested by the Board.[231]

Under the final rule, the Board could approve a request for an alternative set of creditor protections if the terms of the QFC, as compared to a covered QFC containing only the limited creditor protections permitted by the final rule, would prevent or mitigate risks to the financial stability of the United States that could arise from the failure of a GSIB and would protect the safety and soundness of bank holding companies and state member banks to at least the same extent.[232] Once approved by the Board, enhanced creditor protections could be used by other covered entities (in addition to the covered entity that submitted the request for Board approval), as appropriate. The request-and-approval process would improve flexibility by allowing for an industry-proposed alternative to the set of creditor protections permitted by the final rule while ensuring that any approved alternative would serve the final rule's policy goals to at least the same extent as a covered QFC that complies fully with the final rule.

Commenters requested that this approval process be made less burdensome and more flexible and urged for additional clarifications on the process for submitting and approving such requests (*e.g.,* whether approvals would be published in the **Federal Register**). For example, commenters requested the final rule include a reasonable timeline (*e.g.,* 180 days) by which the Board would approve or deny a request. Certain commenters urged that counterparties and trade groups, in addition to covered entities, should be permitted to make such requests. One commenter noted that the proposal's approval process would have created a free-rider problem, where parties that submit enhanced creditor protection conditions for Board approval bear the full cost of learning which remedies are available for creditors while other parties will gain that information for free. Commenters contended that the provision requiring a ''written legal opinion verifying the proposed

[226] Under the final rule, if an adherent to the Universal Protocol or U.S. Protocol exercises an available opt-out, covered entities with covered QFCs affected by the exercise would be required to otherwise conform the covered QFCs to the requirements of the rule.

[227] *See* Section 4(b)(i)(A) of the Universal Protocol.

[228] Section 2 of the Universal Protocol provides an exemption for any client-facing leg of a cleared transaction. *See* Section 2(k) of the Universal Protocol and the definition of ''Cleared Client Transaction.'' The final rule does not amend the proposal's treatment of QFCs that are ''Cleared Client Transactions'' under the Universal Protocol, but requires that the provisions of that section must not apply with respect to the U.S. Protocol. *See* final rule § 252.85(a)(3)(ii)(D).

[229] *See* final rule § 252.85(b).

[230] Final rule § 252.85(d)(1)–(10).

[231] *See* final rule § 252.85(b)(3)(ii)–(iii).

[232] *See* final rule § 252.85(c).

provisions and amendments would be valid and enforceable under applicable law of the relevant jurisdictions'' should be eliminated as unnecessary.[233] Additionally, commenters also urged that the provision should be broadened to allow approvals of provisions not directly related to enhanced creditor protections.

The Board has clarified that the Board could approve an alternative proposal of additional creditor protections as compliant with sections 252.83 and 252.84 of the final rule, but has not otherwise modified these provisions of the proposal in response to changes requested by commenters. The provisions contain flexibility and guidance on the process for submitting and approving enhanced creditor protections. The final rule directly places requirements only on covered entities, and thus only covered entities are eligible to submit requests pursuant to these provisions. In response to commenters' concerns, the Board notes that the final rule does not prevent multiple covered entities from presenting one request and does not prevent covered entities from seeking the input of counterparties when developing a request. The final rule does not provide a maximum time to review proposals because proposals could vary greatly in complexity and novelty. The final rule also maintains the provision requiring a written legal opinion, which helps ensure that proposed provisions are valid and enforceable under applicable law. The final rule does not expand the approval process beyond additional creditor protections; however, revisions to aspects of the final rule may be made through the rulemaking process.

III. Transition Periods

Under the proposal, the rule would have required compliance on the first day of the first calendar quarter beginning at least one year after the issuance of the final rule, which the proposal referred to as the effective date.[234] A number of commenters urged the Board to adopt a phased-in approach to compliance that would extend the compliance deadline for covered QFCs with certain types of counterparties in order to allow time for necessary client outreach and education, especially for non-GSIB counterparties that may be unfamiliar with the Universal Protocol or the final rule's requirements. These commenters contended that the original compliance period of one year should be limited to counterparties that are banks, broker-dealers, swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants. These commenters urged that the compliance period for QFCs with asset managers, commodity pools, private funds, and other entities that are predominantly engaged in activities that are financial in nature within the meaning of section 4(k) of the BHC Act should be extended for six months after the date of the original compliance period identified in the proposed rule. Finally, these commenters argued that the compliance period for QFCs with all other counterparties should be extended for 12 months after the date of the original compliance period identified in the proposed rule as these counterparties are likely to be least familiar with the requirements of the final rule.

One commenter suggested that the rule should take effect no sooner than one year from the date that an approved U.S. JMP is published and available for adherence, including any additional time it might take to seek the Board's approval of it. Certain commenters requested that the compliance deadline for covered QFCs entered into by an agent on behalf of a principal be extended by six months as well. Other commenters, however, cautioned against an approach that would impose different deadlines with respect to different classes of QFCs, as opposed to counterparty types, since the main challenge in connection with the remediation is the need for outreach to and education of counterparties. These commenters contended that once a counterparty has become familiar with the requirements of the rule and the terms of the required amendments, it would be more efficient to remediate all covered QFCs with the counterparty at the same time.

A number of commenters also requested that the Board confirm that entities acquired by a GSIB, and thereby become new covered entities, have until the first day of the first calendar quarter immediately following one year after becoming covered entities to conform their existing QFCs. Commenters argued that this would allow the GSIB to conform existing QFCs in an orderly fashion without impairing the ability of covered entities to engage in corporate activities. These commenters also requested clarification that, during that conformance period, affiliates of covered entities would not be prohibited from entering into new transactions or QFCs with counterparties of the newly acquired entity if the existing covered entities otherwise comply with the rule's requirements. Some commenters urged the Board to exclude existing contracts from the final rule's requirements and only apply the rule on a prospective basis.

The effective date for the final rule is 60 days following publication in the **Federal Register**. However, in order to reduce the compliance burden of the final rule, the Board has adopted a phased-in compliance schedule, as requested by commenters. The final rule provides that a covered entity must conform a covered QFC to the requirements of this final rule by the first day of the calendar quarter immediately following one year from the effective date of this subpart with respect to covered QFCs with other covered entities and excluded banks (referred to in this discussion as the ''first compliance date'').[235] This provision allows the counterparties that should be most familiar with the requirements of the final rule over one year to conform with the rule's requirements. Moreover, this is a relatively small number of counterparties that would need to modify their QFCs in the first year following the effective date of the final rule, and many covered entities and excluded banks with covered QFCs have already adhered to the Universal Protocol.

The final rule provides additional time for compliance with the requirements for other types of counterparties. In particular, for other types of financial counterparties [236] (other than small financial institutions) [237], the final rule provides

[233] One commenter also suggested permitting amendments to QFCs to be accomplished through a confirmation document for a new agreement or by email instead of a formal amendment of the QFC signed by the parties. The final rule does not prescribe a specific method for amending covered QFCs.

[234] *See* proposed rule § 252.82(b). Under section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994, new Board regulations that impose requirements on insured depository institutions generally must ''take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.'' 12 U.S.C. 4802(b).

[235] *See* final rule § 252.82(f)(1)(i). The definition of covered QFC of the final rule has been revised to make clear that, consistent with the proposal, a covered QFC is a QFC that the covered entity becomes a party to on or after the first day of the calendar quarter immediately following one year from the effective date of this subpart. *See* final rule § 252.82(c). As discussed above, a covered entity's in-scope QFC that is entered into before this date may also be a covered QFC if the covered entity or any affiliate that is a covered entity or excluded bank also becomes a party to a QFC with the same counterparty or a consolidated affiliate of the same counterparty on or after the first compliance date. *See id.*

[236] *See* final rule § 252.81 (defining ''financial counterparty'').

[237] The final rule defines small financial institution as an insured bank, insured savings

approximately 18 months from the effective date of the final rule for compliance with its requirements, as requested by commenters.[238] For community banks and other non-financial counterparties, the final rule provides approximately two years from the effective date of the final rule for compliance with its requirements, as requested by commenters.[239] Adopting a phased-in compliance approach based on the type (and, in some cases, size) of the counterparty will allow market participants time to adjust to the new requirements and make required changes to QFCs in an orderly manner. It will also give time for development of the U.S. Protocol or any other protocol that would meet the requirements of the final rule.

The Board is giving this additional time for compliance to respond to concerns raised by commenters. The Board encourages covered entities to start planning and outreach efforts early in order to come into compliance with the rule on the time frames provided. The Board believes that this additional time for compliance should also address concerns raised by commenters regarding the burden of conforming existing contracts by allowing firms additional time to conform all covered QFCs to the requirements of the final rule.

Although the phased-in compliance period does not contain special rules related to acting as an agent as requested by certain commenters, the rule has been modified as described above to clarify that a covered entity does not become a party to a QFC solely by acting as agent with respect to the QFC.[240]

Entities that are covered entities when the final rule is effective would be required to comply with the requirements of the final rule beginning on the first compliance date. Thus, a covered entity would be required to ensure that covered QFCs entered into on or after the first compliance date comply with the rule's requirements but would be given more time to conform such covered QFCs with entities that are not covered entities or excluded banks.[241] Moreover, a covered entity would be required to bring an in-scope QFC entered into prior to the first compliance date into compliance with the rule no later than the applicable date of the tiered compliance dates (discussed above) if the covered entity or an affiliate (that is also a covered entity or excluded bank) enters into a new covered QFC with the counterparty to the pre-existing covered QFC or a consolidated affiliate of the counterparty on or after the first compliance date.[242] (Thus, a covered entity would not be required to conform a pre-existing QFC if that covered entity and its covered entity and excluded bank affiliates do not enter into any new QFCs with the same counterparty or its consolidated affiliates on or after the first compliance date.)

In addition, an entity that becomes a covered entity after the effective date of the final rule (a ''new covered entity'' for purposes of this preamble) generally has the same period of time to comply as an entity that is a covered entity on the effective date (*i.e.,* compliance will phase in over a two-year period based on the type of counterparty).[243] The final rule also clarifies that a covered QFC, with respect to a new covered entity, means an in-scope QFC that the new covered entity becomes a party to (1) on the date the covered entity first becomes a covered entity, and (2) before that date, if the covered entity or one of its affiliates that is a covered entity or exempt bank also enters, executes, or otherwise becomes a party to a QFC with the same counterparty or a consolidated affiliate of the counterparty after that date.[244] Under the final rule, a company that is a covered entity on the effective date of the final rule (an ''existing covered entity'' for purposes of this preamble) and becomes an affiliate of a new covered entity generally must conform any existing but non-conformed in-scope QFC that the existing covered entity continues to have with a counterparty after the applicable initial compliance date by the date the new covered entity enters a QFC with the same counterparty (or any of its consolidated affiliates) or within a reasonable period thereafter. Acquisitions of new entities are planned in advance and should include preparing to comply with applicable laws and regulations.

Certain commenters opposed application of the requirements of the rule to existing QFCs, requesting instead that the final rule only apply to QFCs entered into after the effective date of any final rule and that all pre-existing QFCs not be subject to the rule's requirements. Commenters suggested that end users of QFCs with GSIB affiliates might not have entered into existing contracts without the default rights prohibited in the proposed rule and that revising existing QFCs would be time-consuming and expensive. Commenters pointed out that this treatment would be consistent with the final rules in the United Kingdom and the statutory requirements adopted by Germany.

The Board does not believe it is appropriate to exclude all pre-existing QFCs because of the current and future risk that existing covered QFCs pose to the orderly resolution of a covered entity. Moreover, application of different default rights to existing and future transactions within a netting set could cause the netting set to be broken, which commenters noted could increase burden to both parties to the netting set.[245] Therefore, the final rule requires an existing QFC between a covered entity and a counterparty to be conformed to the requirements of the final rule if the covered entity (or an affiliate that is a covered entity or excluded bank) enters into another QFC with the counterparty or its consolidated affiliate on or after the first day of the calendar quarter immediately following one year from the effective date of the final rule.[246] By permitting a covered entity to remain a party to noncompliant QFCs entered before the effective date unless the covered entity or any affiliate (that is also a covered entity or excluded bank) enters into new QFCs with the same counterparty or its affiliates, the final rule strikes a balance between ensuring QFC continuity if the GSIB were to fail and ensuring that covered entities and their existing counterparties can manage any compliance costs and disruptions associated with conforming existing QFCs by refraining from entering into new QFCs. The requirement that a covered entity ensure that all existing QFCs with a particular counterparty and its affiliates are compliant before it or any affiliate of the covered entity (that is also a covered entity or excluded bank) enters into a new QFC with the same counterparty or its affiliates after the effective date will provide covered entities with an incentive to seek the modifications necessary to ensure that their QFCs with their most important counterparties are compliant. Moreover, the volume of noncompliant covered

association, farm credit system institution, or credit union with assets of $10,000,000,000 or less. *See* final rule § 252.81.

[238] *See* final rule § 252.82(f)(1)(ii).

[239] *See* final rule § 252.82(f)(1)(iii).

[240] *See* final rule § 252.82(e)(1).

[241] *See* final rule §§ 252.82(c)(1), 252.82(f)(1).

[242] *See id.*

[243] *See* final rule § 252.82(f)(2).

[244] *See* final rule § 252.82(c)(2).

[245] The requirements of the final rule, particularly those of section 252.84, may have a different impact on netting, including close-out netting, than the U.K. and German requirements cited by commenters.

[246] Subject to any compliance date applicable to the covered entity, the Board expects a covered entity to conform existing QFCs that become covered QFCs within a reasonable period.

QFCs outstanding can be expected to decrease over time and eventually to reach zero. In light of these considerations, and to avoid creating potentially inappropriate compliance costs with respect to existing QFCs with counterparties that, together with their consolidated affiliates, do not enter into new covered QFCs with the GSIB on or after the first day of the calendar quarter that is one year from the effective date of the final rule, it would be appropriate to permit a limited number of noncompliant QFCs to remain outstanding, in keeping with the terms described above. Moreover, the final rule also excludes existing warrants and retail investment advisory agreements to address concerns raised by commenters and mitigate burden.[247] That said, the Board will monitor covered entities' levels of noncompliant QFCs and evaluate the risk, if any, that they pose to the safety and soundness of the GSIBs or to U.S. financial stability.

IV. Costs and Benefits

The Board invited comment on its evaluation of the costs and benefits of the proposal. In response to comments received, the Board has made a number of changes to the proposal that are expected to reduce costs and burdens of compliance with the final rule while at the same time ensuring that the final rule serves its intended purposes.

A number of commenters argued that particular aspects of the proposal were burdensome and costly as described throughout this **SUPPLEMENTARY INFORMATION**. One commenter stated that the proposal was overly complex and difficult for market participants to evaluate and for courts to interpret, which could lead to potentially different or conflicting interpretations.[248] Another commenter contended that the Board has not adequately considered the litigation costs that will result from the final rule's heightened burden of proof. Certain commenters expressed the view that the proposal made unquantified assumptions about the costs, provided no evidence that benefits would outweigh the costs, and did not discuss the impact of the requirements for particular market segments (*e.g.,* physical commodity markets). Certain commenters urged the Board to consider the costs of the contractual default rights lost under the rule and to consider the compliance costs and additional collateral costs the rule will impose on non-GSIB parties to QFCs (including parties not regulated by the Board), particularly in stress scenarios where the non-GSIB party cannot require the GSIB counterparty to post collateral. Some commenters contended that GSIB entities will have to compensate sophisticated non-covered entities for the additional risks they are forced to incur if forced to give up default rights and will bear the cost of the economic barriers to engaging in international finance that follow from this rule. A few commenters argued that, before the Board proceeds to finalize this rule, the Board should conduct a study and assessment of the costs and benefit as well as the market impact of the proposed rules, the TLAC rules, and the broader FSB initiatives, with a specific focus on application to existing default rights and the impact on all affected market participants.

Other commenters pointed out that since large banks already adhere to the Universal Protocol, more than 90 percent of outstanding notional swaps are already subject to stays. These commenters argued that further study and analysis was needed to determine whether it is necessary to restrict end-user default rights by subjecting them indirectly to the proposed rule to capture the remaining 10 percent of the swaps market, including why the benefits outweigh the costs. Commenters also urged further analysis of why other categories of QFCs present the same concerns as swaps such that it is necessary for the Board to alter default rights contained therein (*e.g.,* commodity and forward contracts) and the likely effect of the proposed rule on the markets for such QFCs.

One commenter argued that the benefits of the proposal likely substantially outweigh the costs. This commenter contended that the losses in the Lehman bankruptcy alone due to the ability of counterparties to close out QFCs and seize collateral destroyed millions if not billions of dollars and argued that the exemption of QFCs from the automatic stay of the U.S. Bankruptcy Code has effectively subsidized the cost of credit extended among QFC participants. In this commenter's view, any increase in the cost of QFCs relative to other financial instruments does not reflect true additional cost but rather reflects the loss of this implicit subsidy. The commenter estimated that the 2008 financial crisis following the Lehman bankruptcy had an estimated cost in lost or avoided gross domestic product of more than $20 trillion.

The final rule is intended to yield substantial net benefits for the financial stability of the United States by reducing the potential that resolution of a GSIB, particularly a resolution in bankruptcy, will be disorderly and disruptive to financial stability. These benefits are expected to substantially outweigh the costs associated with the final rule.

The costs of the final rule to covered entities and their QFC counterparties would generally be of three types. The first cost would be the cost to QFC counterparties arising from the relinquishment of certain rights, such as cross-default rights, that would have been permitted prior to the rule. However, the costs of restricting such rights are expected to be low as the nature of the rights that are restricted is narrow, the likelihood of exercising such rights is low, and other forms of protection are available that are not prohibited by the rule.

The second cost associated with the rule is the cost of lost revenue for covered entities that might result if non-covered entity counterparties refuse to engage in QFCs with covered entities as a result of the reduction in rights required by the rule. This cost, however, only accrues in the aggregate to the financial system to the extent that non-covered entity counterparties refuse to engage in QFCs with any counterparty. Third and finally, this rule imposes costs on covered entities and non-covered entities to the extent that they are required to bear legal and administrative costs associated with drafting and negotiating compliant contracts. These costs are expected to be small relative to the costs of doing business in the financial sector generally. Moreover, the final rule explicitly allows for the use of standardized industry protocols in lieu of complying with the terms of the rule, which should reduce the legal and administrative costs associated with complying with the rule.

The Board has taken into account the information regarding costs and benefits provided by commenters and modified the proposed rule to reduce costs. To reduce the overall burden, the final rule contains a number of changes to respond to commenter concerns. As described above, the final rule reduces compliance and negotiating costs by excluding contracts from the scope of ''covered QFCs'' subject to the requirements of the final rule to the extent the contract contains no default, cross-default, or transfer restrictions.

[247] *See* final rule § 252.88(c).

[248] Some commenters requested that the rule be rewritten to be more understandable to non-covered entity counterparties and that the Board release FAQs regarding this final rule that are understandable to non-financial counterparties. The Board has endeavored to clarify the final rule as much as possible and has discussed those clarifications throughout this **SUPPLEMENTARY INFORMATION**. The Board does not believe FAQs for this final rule are required at this time, but will consider the need for such FAQs in the future.

Commenters argued that remediating such contracts would be costly without an attendant benefit to resolution of a GSIB. The final rule also only requires remediation of existing contracts with a counterparty if the counterparty or a consolidated affiliate of the counterparty enters into a new QFC with the covered entity (or certain affiliates). This change to consolidated affiliate is in response to many commenters' argument that burden would be mitigated by defining counterparties by reference to financial consolidation. Additionally, in certain cases, where remediation of existing contracts would be difficult, the Board excludes such existing contracts from the scope of coverage of the requirements of the final rule. Finally, the final rule allows for the application of two standardized industry protocols as a means of complying with the requirements of the final rule. Adhering to an industry protocol will provide for a low cost and efficient means of compliance that does not result in excessive amounts of legal or administrative costs.

The final rule similarly excludes from section 252.83 contracts that are with U.S. counterparties and governed by U.S. law. Commenters argued that renegotiating these contracts would be burdensome with no benefit to resolution. The final rule has also been modified to address concerns raised by foreign GSIBs regarding QFCs under multi-branch master agreements by excluding from the rule QFCs where only payment or delivery may be made at a U.S. branch or agency. Foreign GSIB commenters urged that this change would eliminate the need under the proposal to modify thousands of contracts at great cost.

The final rule also provides a longer transition period requested by commenters for certain counterparties in order to help mitigate the compliance burden on covered entities and their counterparties.

The Board believes that the changes above address many of the significant concerns raised by commenters regarding the burdens of the proposed rule and should serve to mitigate the compliance costs of the final rule. The Board also notes that application of the final rule is limited to GSIBs and believes that this approach to limiting the application of this final rule sensibly balances the costs and benefits of the rule by effectively managing systemic risk while at the same time limiting the burden of compliance by not requiring non-GSIB firms to comply with any part of this final rule.

Additionally, the stay-and-transfer provisions of the Dodd-Frank Act and the FDI Act are already in force, and the Universal Protocol is already partially effective. This observation provides further support for the view that any marginal costs created by the final rule—which is intended to extend the effects of the stay-and-transfer provisions under those acts and the Universal Protocol—are unlikely to be material.

Thus, the costs of the final rule are likely to be small relative to its benefits. These relatively small costs appear to be significantly outweighed by the substantial benefits that the rule would produce for the U.S. economy. Financial crises impose enormous costs on the real economy, so even small reductions in the probability or severity of future financial crises create substantial economic benefits. The final rule would materially reduce the risk to the financial stability of the United States that could arise from the severe distress or failure of a GSIB by enhancing the prospects for the orderly resolution of such a firm and would thereby materially reduce the probability and severity of financial crises in the future. The final rule would therefore advance a key objective of the Dodd-Frank Act and help protect the American economy from the substantial costs associated with more frequent and severe financial crises.

In addition, the final rule would likely benefit subsidiaries of a failed GSIB, as well as their counterparties and creditors, by helping to prevent the disorderly failure of the subsidiaries and allowing them to continue to meet their obligations. Moreover, non-covered entity counterparties may choose to engage in QFCs with non-GSIB counterparties, in which case revenue that is lost by a GSIB may be recouped by a non-GSIB and aggregate QFC activity by the financial system would not decline.

V. Revisions to Certain Definitions in the Board's Capital and Liquidity Rules

The final rule also amends several definitions in the Board's capital and liquidity rules to help ensure that the final rule would not have unintended effects for the treatment of covered entities' netting sets under those rules. The amendments are similar to the proposed rule as well as revisions that the Board and the OCC made in a 2014 interim final rule to prevent similar effects from foreign jurisdictions' special resolution regimes and firms' adherence to the 2014 Universal Protocol.[249]

The Board's regulatory capital rules permit a banking organization to measure exposure from certain types of financial contracts on a net basis and recognize the risk-mitigating effect of financial collateral for other types of exposures, provided that the contracts are subject to a ''qualifying master netting agreement'' or agreement that provides for certain rights upon the default of a counterparty.[250] The Board has defined ''qualifying master netting agreement'' to mean a netting agreement that permits a banking organization to terminate, apply close-out netting, and promptly liquidate or set off collateral upon an event of default of the counterparty, thereby reducing its counterparty exposure and market risks.[251] On the whole, measuring the amount of exposure of these contracts on a net basis, rather than on a gross basis, results in a lower measure of exposure and thus a lower capital requirement.

The current definition of ''qualifying master netting agreement'' recognizes that default rights may be stayed if the financial company is in resolution under the Dodd-Frank Act, the FDI Act, a substantially similar law applicable to government-sponsored enterprises, or a substantially similar foreign law, or where the agreement is subject by its terms to any of those laws. Accordingly, transactions conducted under netting agreements where default rights may be stayed in those circumstances may qualify for the favorable capital treatment described above. However, the current definition of ''qualifying master netting agreement'' does not recognize the restrictions that the final rule would impose on the QFCs of covered entities. Thus, a master netting agreement that is compliant with the final rule would not qualify as a qualifying master netting agreement. This would result in considerably higher capital and liquidity requirements for QFC counterparties of covered entities, which is not an intended effect of the final rule.

Accordingly, the final rule amends the definition of ''qualifying master netting agreement'' so that a master netting agreement could qualify for such treatment where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default of the counterparty is consistent with the

[249] *See* 12 CFR part 217.

[250] *See id.*

[251] *See* 12 CFR 217.2.

requirements of the final rule. This revision maintains the existing treatment for these contracts under the Board's capital and liquidity rules by accounting for the restrictions that the final rule, or the substantively identical rules expected to be issued by the FDIC and OCC, would place on default rights related to covered entities' and excluded banks' QFCs. The Board does not believe that the disqualification of master netting agreements that would result in the absence of the amendment would accurately reflect the risk posed by the affected QFCs. As discussed above, the implementation of consistent restrictions on default rights in GSIB QFCs would increase the prospects for the orderly resolution of a failed GSIB and thereby protect the financial stability of the United States.

The final rule similarly revises certain other definitions in the regulatory capital rules to make analogous conforming changes designed to account for the final rule's restrictions and ensure that a banking organization may continue to recognize the risk-mitigating effects of financial collateral received in a secured lending transaction, repo-style transaction, or eligible margin loan for purposes of the Board's rules. Specifically, the final rule revises the definitions of ''collateral agreement,'' ''eligible margin loan,'' and ''repo-style transaction'' to provide that a counterparty's default rights may be limited as required by the final rule without unintended effects.[252]

The rule establishing margin and capital requirements for covered swap entities (swap margin rule) defines the term ''eligible master netting agreement'' in a manner similar to the definition of ''qualifying master netting agreement.'' [253] Thus, it may also be appropriate to amend the definition of ''eligible master netting agreement'' to account for the restrictions on covered entities' QFCs. Because the Board issued the swap margin rule jointly with other U.S. regulatory agencies, however, the Board is consulting with the other prudential regulators regarding amending that rule's definition of ''eligible master netting agreement.''

Certain commenters requested technical modifications to the proposed modifications to the definitions to better distinguish the requirements of section 252.84 and the provisions of Section 2 of the Universal Protocol from provisions regarding ''opt in'' to special resolution regimes. In response to this comment, the final rule establishes an independent exception addressing the requirements of section 252.84 and the provisions of Section 2 of the Universal Protocol and makes other minor clarifying edits.

One commenter requested that the definitions of the terms ''collateral agreement,'' ''eligible margin loan,'' ''qualifying master netting agreement,'' and ''repo-style transaction'' include references to stays in state resolution regimes (such as insurance receiverships). The commenters did not identify, and the Board is not aware of, any state resolution regime that currently includes QFC stays similar to those of the U.S. Special Resolution Regimes. Neither the nature of the potential laws nor the extent of their effect on the regulatory capital requirements of Board-regulated institutions is known. Therefore, the final rule does not reference state resolution regimes.

One commenter argued that neither the current nor the proposed definition of qualifying master netting agreement comports with section 302(a) of the Business Risk Mitigation and Price Stabilization Act of 2015, which exempts certain types of counterparties from initial and variation margin requirements, and that the proposed amendments to the definition add unnecessary complexity to the Board's existing rules and therefore make compliance more difficult. Section 302(a) of that act is not relevant to the definition of qualifying master netting agreement because the definition does not require initial or variation margin. Rather, the definition of qualifying master netting agreement requires that margin provided under the agreement, if any, be able to be promptly liquidated or set off under the circumstances specified in the definition. The Board continues to believe that the amendments are necessary and do not substantially add to the complexity of the Board's rules.

VI. Regulatory Analysis

A. Paperwork Reduction Act

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 through 3521). The Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The reporting requirements are found in sections 252.85(b) and 252.87(b) of the final rule. These information collection requirements would be implemented pursuant to section 165 of the Dodd-Frank Act, as well as its safety and soundness and other relevant authorities, as described in the Abstract below. In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The final rule would revise the Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY) (Reg YY; OMB No. 7100–0350). In addition, as permitted by the PRA, the Board proposes to extend for three years, with revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY) (Reg YY; OMB No. 7100–0350). The Board received no comments on the PRA.

The Board has a continuing interest in the public's opinions of collections of information. At any time, commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to the **ADDRESSES** section. All comments will become a matter of public record. Additionally, commenters may send a copy of their comments to the OMB desk officer for the agency by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov*.

Proposed Revision, With Extension, of the Following Information Collection

Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY).

Agency Form Number: Reg YY.

OMB Control Number: 7100–0350.

Frequency of Response: Annual, semiannual, quarterly, one-time, and on occasion.

Affected Public: Businesses or other for-profit.

Respondents: State member banks, U.S. bank holding companies, savings and loan holding companies, nonbank

[252] As noted above, the FDIC and OCC are expected to issue substantively identical final rules in the near future. A Board-regulated instiution that amends a qualifying master netting agreement, collateral agreement, eligible margin loan, or repo-style transaction to the extent necessary for its counterparty to conform the agreement to any final rules issued by the FDIC or OCC would continue to meet such definition under the Board's capital and/or liquidity rules, regardless of whether the agreement is amended before the effective date of any final rule issued by the FDIC or OCC.

[253] 80 FR 74840, 74861–62 (Nov. 30, 2015).

financial companies, foreign banking organizations, U.S. intermediate holding companies, foreign savings and loan holding companies, and foreign nonbank financial companies supervised by the Board.

Abstract: Section 165 of the Dodd-Frank Act requires the Board to implement enhanced prudential standards for bank holding companies with total consolidated assets of $50 billion or more, including global systemically important foreign banking organizations with $50 billion or more in total consolidated assets. Section 165 of the Dodd-Frank Act also permits the Board to establish such other prudential standards for such banking organizations as the Board determines are appropriate. This regulation is being implemented by the Board under section 165 of the Dodd-Frank Act, as well as its safety and soundness and other relevant authorities.[254]

Reporting Requirements

Section 252.85(b) of the final rule would require a covered entity to request the Board to approve as compliant with the requirements of sections 252.83 and 252.84 of this subpart provisions of one or more forms of covered QFCs, or proposed amendments to one or more forms of covered QFCs, with enhanced creditor protection conditions. Enhanced creditor protection conditions means a set of limited exemptions to the requirements of section 252.84(b) of this subpart that are different than those of paragraphs (d), (f), and (h) of section 252.84 of this subpart. A covered entity making a request must provide (1) an analysis of the proposal under each consideration of paragraph 252.85(d) of this subpart; (2) a written legal opinion verifying that proposed provisions or amendments would be valid and enforceable under applicable law of the relevant jurisdictions, including, in the case of proposed amendments, the validity and enforceability of the proposal to amend the covered QFCs; and (3) any additional relevant information that the Board requests.

Section 252.87(b) of the final rule would require each top-tier foreign banking organization that determines that it has the characteristics of a global systemically important banking organization under the global methodology to notify the Board of the determination by January 1 of each calendar year.[255]

Estimated Paperwork Burden for Proposed Revisions

Estimated Number of Respondents:
Section 252.85(b)—10 respondents.
Section 252.87(b)—22 respondents.
Estimated Burden per Response:
Section 252.85(b)—40 hours.
Section 252.87(b)—1 hour.
Current estimated annual burden for Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY): 118,842 hours.
Proposed revisions estimated annual burden: 422 hours.
Total estimated annual burden: 119,264 hours.

B. Regulatory Flexibility Act: Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking.

The Board solicited public comment on this rule in a notice of proposed rulemaking [256] and has considered the potential impact of this rule on small entities in accordance with section 604 of the RFA. Based on the Board's analysis, and for the reasons stated below, the Board believes the final rule will not have a significant economic impact on a substantial number of small entities.

Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with assets of $550 million or less (small banking entities).[257] Based on data as of June 2017, there are approximately 3,758 bank holding companies, savings and loan holding companies, and state member banks that have total domestic assets of $550 million or less and thus are considered small entities for purposes of the RFA. Based on the Board's analysis, and for the reasons stated below, the Board believes the final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.*

As discussed, the Board is issuing this final rule as part of its program to make GSIBs more resolvable in order to reduce the risk that their failure would pose to the financial stability of the United States, consistent with section 165 of the Dodd-Frank Act. In particular, the primary purpose of the final rule is to reduce the risk that the exercise of default rights by a failing GSIB's QFC counterparties would lead to a disorderly failure of the GSIB and would produce negative contagion and disruption that could destabilize the U.S. financial system.

2. *Significant issues raised by the public comments in response to the IRFA and comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule and summary of any changes made in the proposed rule as a result of such comments.*

Commenters did not raise any issues in response to the IRFA. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to the proposed rule.

3. *Description and estimate of the number of small entities to which the final rule will apply.*

The final rule's requirements to conform covered QFCs would only apply to GSIBs, which are the largest, most systemically important banking organizations, and certain of their subsidiaries. More specifically, the final rule would apply to (a) any U.S. GSIB top-tier bank holding company, (b) any subsidiary of such a bank holding company other than the exceptions described in the **SUPPLEMENTARY INFORMATION** above for institutions regulated by the FDIC and OCC and certain investments, and (c) the U.S. operations of any foreign GSIB other than the exceptions described in the **SUPPLEMENTARY INFORMATION** above for institutions regulated by the FDIC and OCC and certain investments. The Board estimates that these requirements would apply to approximately 30 banking organizations: Eight U.S. bank holding companies (*i.e.,* U.S. GSIBs) and approximately 22 foreign banking organizations (*i.e.,* foreign GSIBs with U.S. operations). None of these banking organizations would qualify as a small banking entity for the purposes of the RFA. However, as discussed above, the final rule also applies to each covered GSIB's subsidiary that meets the definition of a covered entity (regardless of the subsidiary's size) because an

[254] 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

[255] Global methodology means the assessment methodology and the higher loss absorbency requirement for global systemically important banks issued by the Basel Committee on Banking Supervision, as updated from time to time. 12 CFR 252.2(o).

[256] *See* 81 FR 29169 (May 11, 2016).

[257] *See* 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

exemption for small entities would significantly impair the effectiveness of the proposed stay-and-transfer provisions and thereby undermine a key objective of the final rule: To reduce the execution risk of an orderly GSIB resolution. The Board anticipates that any small subsidiary of a GSIB that is covered by this final rule would rely on its parent GSIB or a large subsidiary of that GSIB for reporting, recordkeeping, or similar compliance requirements and would not bear additional costs.

Section 252.87(b) of the final rule would require each top-tier foreign banking organization that determines that it has the characteristics of a global systemically important banking organization under the global methodology to notify the Board of the determination by January 1 of each calendar year.[258] All of these organizations by definition have $50 billion or more in total consolidated assets. None of these banking organizations would qualify as a small banking entity for the purposes of the RFA.

4. *Significant alternatives to the final rule.*

In light of the foregoing, the Board does not believe that this final rule will have a significant negative economic impact on any small entities and therefore believes that there are no significant alternatives to the final rule that would reduce the impact on small entities.

5. *Steps taken to minimize the significant economic impact on small entities.*

As noted, the Board believes that an exemption for small entities would significantly impair the effectiveness of the proposed stay-and-transfer provisions and thereby undermine a key objective of the final rule: To reduce the execution risk of an orderly GSIB resolution. The Board did not receive any comments from small entities suggesting alternatives specific to those entities or quantifying their projected costs. The Board received, however, general comments that suggested alternatives that would reduce the burden on entities without regard to size. The Board has considered those comments and changes in the final rule in response to such comments in other sections of this **SUPPLEMENTARY INFORMATION** section. In addition, the Board anticipates that any small subsidiary of a GSIB that is covered by this final rule would rely on its parent GSIB or a large subsidiary of that GSIB for reporting, recordkeeping, or similar compliance requirements and would not bear additional costs.

C. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. The Board has considered comment on these matters in other sections of this **SUPPLEMENTARY INFORMATION** section.

In addition, new regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. Therefore, covered entities, which include certain insured depository institutions, are required to comply with the requirements of the final rule on the first day of calendar quarters after the effective date of the regulation.

D. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the U.S. banking agencies to use plain language in all proposed and final rulemakings published after January 1, 2000.[259] The Board received no comment on these matters and believes that the final rule is written plainly and clearly.

List of Subjects in 12 CFR Parts 217, 249, and 252

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System amends 12 CFR parts 217, 249, and 252 as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 2. Section 217.2 is amended by:
■ a. Revising the definition of ''collateral agreement'';
■ b. Revising paragraph (1)(iii) of the definition of ''eligible margin loan'';
■ c. Revising the definition of ''qualifying master netting agreement'';
■ d. Republishing the introductory text of the definition of ''repo-style transaction''; and
■ e. Revising paragraph (3)(ii)(A) of the definition of ''repo-style transaction''.

The revisions and republication are set forth below:

§ 217.2 Definitions.

* * * * *

Collateral agreement means a legal contract that specifies the time when, and circumstances under which, a counterparty is required to pledge collateral to a Board-regulated institution for a single financial contract or for all financial contracts in a netting set and confers upon the Board-regulated institution a perfected, first-priority security interest (notwithstanding the prior security interest of any custodial agent), or the legal equivalent thereof, in the collateral posted by the counterparty under the agreement. This security interest must provide the Board-regulated institution with a right to close-out the financial positions and liquidate the collateral upon an event of default of, or failure to perform by, the counterparty under the collateral agreement. A contract would not satisfy this requirement if the Board-regulated institution's exercise of rights under the agreement may be stayed or avoided:

(1) Under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[4] to the U.S. laws

[258] Global methodology means the assessment methodology and the higher loss absorbency requirement for global systemically important banks issued by the Basel Committee on Banking Supervision, as updated from time to time. 12 CFR 252.2(o).

[259] 12 U.S.C. 4809(a).

[4] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation

referenced in this paragraph (1)(i) in order to facilitate the orderly resolution of the defaulting counterparty;

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (1)(i) of this definition; or

(2) Other than to the extent necessary for the counterparty to comply with the requirements of subpart I of the Board's Regulation YY (part 252 of this chapter), part 47 of this title, or part 382 of this title, as applicable.

* * * * *

Eligible margin loan means:

(1) * * *

(iii) The extension of credit is conducted under an agreement that provides the Board-regulated institution the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, conservatorship, or similar proceeding, of the counterparty, provided that, in any such case:

(A) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(*1*) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs,[5] or laws of foreign jurisdictions that are substantially similar[6] to the U.S. laws referenced in this paragraph (1)(iii)(A)(*1*) in order to facilitate the orderly resolution of the defaulting counterparty; or

(*2*) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (1)(iii)(A)(*1*) of this definition; and

(B) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of subpart I of the Board's Regulation YY (part 252 of this chapter), part 47 of this title, or part 382 of this title, as applicable.

* * * * *

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the Board-regulated institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case:

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[7] to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of subpart I of the Board's Regulation YY (part 252 of this chapter), part 47 of this title, or part 382 of this title, as applicable;

* * * * *

Repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the Board-regulated institution acts as agent for a customer and indemnifies the customer against loss, provided that:

(3) * * *

(ii) * * *

(A) The transaction is executed under an agreement that provides the Board-regulated institution the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case:

(*1*) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(*i*) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[8] to the U.S. laws referenced in this paragraph (3)(ii)(A)(*1*)(*i*) in order to facilitate the orderly resolution of the defaulting counterparty;

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (3)(ii)(A)(*1*)(*i*) of this definition; and

(*2*) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of subpart I of the Board's Regulation YY (part 252 of this chapter), part 47 of this title, or part 382 of this title, as applicable; or

* * * * *

PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)

■ 3. The authority citation for part 249 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368.

■ 4. Section 249.3 is amended by revising the definition of ''qualifying master netting agreement'' to read as follows:

§ 249.3 Definitions.

* * * * *

whether foreign special resolution regimes meet the requirements of this paragraph.

[5] This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute ''securities contracts'' under section 555 of the Bankruptcy Code (11 U.S.C. 555), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act, or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE (12 CFR part 231).

[6] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

[7] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

[8] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the Board-regulated institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case:

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar [1] to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty;

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of subpart I of the Board's Regulation YY (part 252 of this chapter), part 47 of this title, or part 382 of this title, as applicable;

* * * * *

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 5. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

[1] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

■ 6. Add subpart I to read as follows:

Subpart I—Requirements for Qualified Financial Contracts of Global Systemically Important Banking Organizations

Sec.

Subpart I—Requirements for Qualified Financial Contracts of Global Systemically Important Banking Organizations

§ 252.81 Definitions.

For purposes of this subpart:

Central counterparty (CCP) has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

Chapter 11 proceeding means a proceeding under Chapter 11 of Title 11, United States Code (11 U.S.C. 1101–74.).

Consolidated affiliate means an affiliate of another company that

(1) Either consolidates the other company, or is consolidated by the other company, on financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards;

(2) Is, along with the other company, consolidated with a third company on a financial statement prepared in accordance with principles or standards referenced in paragraph (1) of this definition; or

(3) For a company that is not subject to principles or standards referenced in paragraph (1), if consolidation as described in paragraph (1) or (2) of this definition would have occurred if such principles or standards had applied.

Default right (1) Means, with respect to a QFC, any:

(i) Right of a party, whether contractual or otherwise (including, without limitation, rights incorporated by reference to any other contract, agreement, or document, and rights afforded by statute, civil code, regulation, and common law), to liquidate, terminate, cancel, rescind, or accelerate such agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay, or defer payment or performance thereunder, or modify the obligations of a party thereunder, or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral, or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure;

(2) With respect to § 252.84, does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

Excluded bank:

(1) Means a national bank, a Federal savings association, a Federal branch, a Federal agency, or an FSI that is exempted from the scope of this subpart pursuant to paragraph (b)(2) or (b)(3) of § 252.82;

(2) Does not include any entity described in paragraph (1) of this definition that is owned pursuant to section 3(a)(A)(ii) of the Bank Holding Company Act (12 U.S.C. 1842(a)(A)(ii)); is owned by a depository institution in satisfaction of debt previously contracted in good faith; is a portfolio concern, as defined under 13 CFR 107.50, that is controlled by a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958 (15 U.S.C. 662); is owned pursuant to paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24); or is a DPC branch subsidiary.

FDI Act proceeding means a proceeding in which the Federal Deposit Insurance Corporation is appointed as conservator or receiver under section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821).

FDI Act stay period means, in connection with an FDI Act proceeding, the period of time during which a party to a QFC with a party that is subject to an FDI Act proceeding may not exercise any right that the party that is not subject to an FDI Act proceeding has to terminate, liquidate, or net such QFC, in accordance with section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) and any implementing regulations.

Financial counterparty means a person that is:

(1)(i) A bank holding company or an affiliate thereof; a savings and loan holding company as defined in section 10(n) of the Home Owners' Loan Act (12 U.S.C. 1467a(n)); a U.S. intermediate holding company that is established or designated for purposes of compliance with this part; or a nonbank financial company supervised by the Board;

(ii) A depository institution as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)); an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside the United States; a Federal credit union or State credit union as defined in section 2 of the Federal Credit Union Act (12 U.S.C. 1752(1) & (6)); an institution that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(D)); an industrial loan company, an industrial bank, or other similar institution described in section 2(c)(2)(H) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(H));

(iii) An entity that is state-licensed or registered as:

(A) A credit or lending entity, including a finance company; money lender; installment lender; consumer lender or lending company; mortgage lender, broker, or bank; motor vehicle title pledge lender; payday or deferred deposit lender; premium finance company; commercial finance or lending company; or commercial mortgage company; except entities registered or licensed solely on account of financing the entity's direct sales of goods or services to customers;

(B) A money services business, including a check casher; money transmitter; currency dealer or exchange; or money order or traveler's check issuer;

(iv) A regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4502(20)) or any entity for which the Federal Housing Finance Agency or its successor is the primary federal regulator;

(v) Any institution chartered in accordance with the Farm Credit Act of 1971, as amended, 12 U.S.C. 2002 *et seq.,* that is regulated by the Farm Credit Administration;

(vi) Any entity registered with the Commodity Futures Trading Commission as a swap dealer or major swap participant pursuant to the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*), or an entity that is registered with the U.S. Securities and Exchange Commission as a security-based swap dealer or a major security-based swap participant pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

(vii) A securities holding company, with the meaning specified in section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1850a); a broker or dealer as defined in sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)–(5)); an investment adviser as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); an investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or a company that has elected to be regulated as a business development company pursuant to section 54(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–53(a));

(viii) A private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); an entity that would be an investment company under section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) but for section 3(c)(5)(C); or an entity that is deemed not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to Investment Company Act Rule 3a–7 (17 CFR 270.3a–7) of the U.S. Securities and Exchange Commission;

(ix) A commodity pool, a commodity pool operator, or a commodity trading advisor as defined, respectively, in sections 1a(10), 1a(11), and 1a(12) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(10), 1a(11), and 1a(12)); a floor broker, a floor trader, or introducing broker as defined, respectively, in sections 1a(22), 1a(23) and 1a(31) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(22), 1a(23), and 1a(31)); or a futures commission merchant as defined in section 1a(28) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(28));

(x) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002);

(xi) An entity that is organized as an insurance company, primarily engaged in writing insurance or reinsuring risks underwritten by insurance companies, or is subject to supervision as such by a State insurance regulator or foreign insurance regulator; or

(xii) An entity that would be a financial counterparty described in paragraphs (1)(i)–(xi) of this definition, if the entity were organized under the laws of the United States or any state thereof.

(2) The term ''financial counterparty'' does not include any counterparty that is:

(i) A sovereign entity;

(ii) A multilateral development bank; or

(iii) The Bank for International Settlements.

Financial market utility (FMU) means any person, regardless of the jurisdiction in which the person is located or organized, that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person, but does not include:

(1) Designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), or national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), solely by reason of their providing facilities for comparison of data respecting the terms of settlement of securities or futures transactions effected on such exchange or by means of any electronic system operated or controlled by such entities, provided that the exclusions in this clause apply only with respect to the activities that require the entity to be so registered; or

(2) Any broker, dealer, transfer agent, or investment company, or any futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator, solely by reason of functions performed by such institution as part of brokerage, dealing, transfer agency, or investment company activities, or solely by reason of acting on behalf of a FMU or a participant therein in connection with the furnishing by the FMU of services to its

participants or the use of services of the FMU by its participants, provided that services performed by such institution do not constitute critical risk management or processing functions of the FMU.

FSI means a state savings association or state nonmember bank (as the terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813).

Investment advisory contract means any contract or agreement whereby a person agrees to act as investment adviser to or to manage any investment or trading account of another person.

Master agreement means a QFC of the type set forth in sections 210(c)(8)(D)(ii)(XI), (iii)(IX), (iv)(IV), (v)(V), or (vi)(V) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)(ii)(XI), (iii)(IX), (iv)(IV), (v)(V), or (vi)(V)) or a master agreement that the Federal Deposit Insurance Corporation determines by regulation is a QFC pursuant to section 210(c)(8)(D)(i) of Title II of the act (12 U.S.C. 5390(c)(8)(D)(i)).

Person has the same meaning as in 12 CFR 225.2.

Qualified financial contract (QFC) has the same meaning as in section 210(c)(8)(D) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)).

Retail customer or counterparty has the same meaning as in § 249.3 of the Board's Regulation WW (12 CFR 249.3).

Small financial institution means a company that:

(1) Is organized as a bank, as defined in section 3(a) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation; a savings association, as defined in section 3(b) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation; a farm credit system institution chartered under the Farm Credit Act of 1971; or an insured Federal credit union or State-chartered credit union under the Federal Credit Union Act; and

(2) Has total assets of $10,000,000,000 or less on the last day of the company's most recent fiscal year.

U.S. special resolution regimes means the Federal Deposit Insurance Act (12 U.S.C. 1811–1835a) and regulations promulgated thereunder and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381–5394) and regulations promulgated thereunder.

§ 252.82 Applicability.

(a) *General requirement.* A covered entity must ensure that each covered QFC conforms to the requirements of §§ 252.83 and 252.84.

(b) *Covered entities.* For purposes of this subpart, a covered entity is:

(1) A bank holding company that is identified as a global systemically important BHC pursuant to 12 CFR 217.402;

(2) A subsidiary of a company identified in paragraph (b)(1) of this section other than a subsidiary that is:

(i) A national bank, a Federal savings association, a Federal branch, a Federal agency, an FSI;

(ii) A company owned pursuant to section 3(a)(A)(ii), 4(c)(2), 4(k)(4)(H), or 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. 1842(a)(A)(ii), 1843(c)(2), 1843(k)(4)(H), 1843(k)(4)(I));

(iii) A company owned by a depository institution in satisfaction of debt previously contracted in good faith;

(iv) A portfolio concern, as defined under 13 CFR 107.50, that is controlled by a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958 (15 U.S.C. 662); or

(v) A company the business of which is to make investments that are designed primarily to promote the public welfare, of the type permitted under paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24), including the welfare of low- and moderate-income communities or families (such as providing housing, services, or jobs)); or

(3) A U.S. subsidiary, U.S. branch, or U.S. agency of a global systemically important foreign banking organization other than a U.S. subsidiary, U.S. branch, or U.S. agency that is:

(i) A national bank, a Federal savings association, a Federal branch, a Federal agency, an FSI;

(ii) A company owned pursuant to section 3(a)(A)(ii), 4(c)(2), 4(k)(4)(H), or 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. 1842(a)(A)(ii), 1843(c)(2), 1843(k)(4)(H), 1843(k)(4)(I));

(iii) A company owned by a depository institution in satisfaction of debt previously contracted in good faith;

(iv) A portfolio concern, as defined under 13 CFR 107.50, that is controlled by a small business investment company, as defined in section 103(3) of the Small Business Investment Act of 1958 (15 U.S.C. 662);

(v) A company the business of which is to make investments that are designed primarily to promote the public welfare, of the type permitted under paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24), including the welfare of low- and moderate-income communities or families (such as providing housing, services, or jobs);

(vi) A section 2(h)(2) company; or

(vii) A DPC branch subsidiary.

(c) *Covered QFCs.* For purposes of this subpart, a covered QFC is:

(1) With respect to a covered entity that is a covered entity on November 13, 2017, an in-scope QFC that the covered entity:

(i) Enters, executes, or otherwise becomes a party to on or after January 1, 2019; or

(ii) Entered, executed, or otherwise became a party to before January 1, 2019, if the covered entity or any affiliate that is a covered entity or excluded bank also enters, executes, or otherwise becomes a party to a QFC with the same person or a consolidated affiliate of the same person on or after January 1, 2019.

(2) With respect to a covered entity that becomes a covered entity after November 13, 2017, an in-scope QFC that the covered entity:

(i) Enters, executes or otherwise becomes a party to on or after the later of the date the covered entity first becomes a covered entity and January 1, 2019; or

(ii) Entered, executed, or otherwise became a party to before the date identified in paragraph (c)(2)(i) of this section with respect to the covered entity, if the covered entity or any affiliate that is a covered entity or excluded bank also enters, executes, or otherwise becomes a party to a QFC with the same person or consolidated affiliate of the same person on or after the date identified in paragraph (c)(2)(i) with respect to the covered entity.

(d) *In-scope QFCs.* An in-scope QFC is a QFC that explicitly:

(1) Restricts the transfer of a QFC (or any interest or obligation in or under, or any property securing, the QFC) from a covered entity; or

(2) Provides one or more default rights with respect to a QFC that may be exercised against a covered entity.

(e) *Rules of construction.* For purposes of this subpart:

(1) A covered entity does not become a party to a QFC solely by acting as agent with respect to the QFC; and

(2) The exercise of a default right with respect to a covered QFC includes the automatic or deemed exercise of the default right pursuant to the terms of the QFC or other arrangement.

(f) *Initial applicability of requirements for covered QFCs.* (1) With respect to each of its covered QFCs, a covered entity that is a covered entity on November 13, 2017 must conform the covered QFC to the requirements of this subpart by:

(i) January 1, 2019, if each party to the covered QFC is a covered entity or an excluded bank;

(ii) July 1, 2019, if each party to the covered QFC (other than the covered entity) is a financial counterparty that is not a covered entity or excluded bank; or

(iii) January 1, 2020, if a party to the covered QFC (other than the covered entity) is not described in paragraph (f)(1)(i) or (f)(1)(ii) of this section or if, notwithstanding paragraph (f)(1)(ii), a party to the covered QFC (other than the covered entity) is a small financial institution.

(2) With respect to each of its covered QFCs, a covered entity that is not a covered entity on November 13, 2017 must conform the covered QFC to the requirements of this subpart by:

(i) The first day of the calendar quarter immediately following 1 year after the date the covered entity first becomes a covered entity, if each party to the covered QFC is a covered entity or an excluded bank;

(ii) The first day of the calendar quarter immediately following 18 months from the date the covered entity first becomes a covered entity if each party to the covered QFC (other than the covered entity) is a financial counterparty that is not a covered entity or excluded bank; or

(iii) The first day of the calendar quarter immediately following 2 years from the date the covered entity first becomes a covered entity if a party to the covered QFC (other than the covered entity) is not described in paragraph (f)(2)(i) or (f)(2)(ii) of this section or if, notwithstanding paragraph (f)(2)(ii), a party to the covered QFC (other than the covered entity) is a small financial institution.

§ 252.83 U.S. Special Resolution Regimes.

(a) *Covered QFCs not required to be conformed.* (1) Notwithstanding § 252.82, a covered entity is not required to conform a covered QFC to the requirements of this section if:

(i) The covered QFC designates, in the manner described in paragraph (a)(2) of this section, the U.S. special resolution regimes as part of the law governing the QFC; and

(ii) Each party to the covered QFC, other than the covered entity, is:

(A) An individual that is domiciled in the United States, including any State;

(B) A company that is incorporated in or organized under the laws of the United States or any State;

(C) A company the principal place of business of which is located in the United States, including any State; or

(D) A U.S. branch or U.S. agency.

(2) A covered QFC designates the U.S. special resolution regimes as part of the law governing the QFC if the covered QFC:

(i) Explicitly provides that the covered QFC is governed by the laws of the United States or a state of the United States; and

(ii) Does not explicitly provide that one or both of the U.S. special resolution regimes, or a broader set of laws that includes a U.S. special resolution regime, is excluded from the laws governing the covered QFC.

(b) *Provisions required.* A covered QFC must explicitly provide that:

(1) In the event the covered entity becomes subject to a proceeding under a U.S. special resolution regime, the transfer of the covered QFC (and any interest and obligation in or under, and any property securing, the covered QFC) from the covered entity will be effective to the same extent as the transfer would be effective under the U.S. special resolution regime if the covered QFC (and any interest and obligation in or under, and any property securing, the covered QFC) were governed by the laws of the United States or a state of the United States; and

(2) In the event the covered entity or an affiliate of the covered entity becomes subject to a proceeding under a U.S. special resolution regime, default rights with respect to the covered QFC that may be exercised against the covered entity are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regime if the covered QFC were governed by the laws of the United States or a state of the United States.

(c) *Relevance of creditor protection provisions.* The requirements of this section apply notwithstanding paragraphs (d), (f), and (h) of § 252.84.

§ 252.84 Insolvency proceedings.

(a) *Covered QFCs not required to be conformed.* Notwithstanding § 252.82, a covered entity is not required to conform a covered QFC to the requirements of this section if the covered QFC:

(1) Does not explicitly provide any default right with respect to the covered QFC that is related, directly or indirectly, to an affiliate of the direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding; and

(2) Does not explicitly prohibit the transfer of a covered affiliate credit enhancement, any interest or obligation in or under the covered affiliate credit enhancement, or any property securing the covered affiliate credit enhancement to a transferee upon or following an affiliate of the direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding or would prohibit such a transfer only if the transfer would result in the supported party being the beneficiary of the credit enhancement in violation of any law applicable to the supported party.

(b) *General prohibitions.* (1) A covered QFC may not permit the exercise of any default right with respect to the covered QFC that is related, directly or indirectly, to an affiliate of the direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding.

(2) A covered QFC may not prohibit the transfer of a covered affiliate credit enhancement, any interest or obligation in or under the covered affiliate credit enhancement, or any property securing the covered affiliate credit enhancement to a transferee upon or following an affiliate of the direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding unless the transfer would result in the supported party being the beneficiary of the credit enhancement in violation of any law applicable to the supported party.

(c) *Definitions relevant to the general prohibitions*—(1) *Direct party.* Direct party means a covered entity or excluded bank that is a party to the direct QFC.

(2) *Direct QFC.* Direct QFC means a QFC that is not a credit enhancement, *provided that,* for a QFC that is a master agreement that includes an affiliate credit enhancement as a supplement to the master agreement, the direct QFC does not include the affiliate credit enhancement.

(3) *Affiliate credit enhancement.* Affiliate credit enhancement means a credit enhancement that is provided by an affiliate of a party to the direct QFC that the credit enhancement supports.

(d) *General creditor protections.* Notwithstanding paragraph (b) of this section, a covered direct QFC and covered affiliate credit enhancement that supports the covered direct QFC may permit the exercise of a default right with respect to the covered QFC that arises as a result of:

(1) The direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding;

(2) The direct party not satisfying a payment or delivery obligation pursuant to the covered QFC or another contract between the same parties that gives rise to a default right in the covered QFC; or

(3) The covered affiliate support provider or transferee not satisfying a payment or delivery obligation pursuant to a covered affiliate credit enhancement that supports the covered direct QFC.

(e) *Definitions relevant to the general creditor protections*—(1) *Covered direct QFC.* Covered direct QFC means a direct QFC to which a covered entity or excluded bank is a party.

(2) *Covered affiliate credit enhancement.* Covered affiliate credit enhancement means an affiliate credit enhancement in which a covered entity or excluded bank is the obligor of the credit enhancement.

(3) *Covered affiliate support provider.* Covered affiliate support provider means, with respect to a covered affiliate credit enhancement, the affiliate of the direct party that is obligated under the covered affiliate credit enhancement and is not a transferee.

(4) *Supported party.* Supported party means, with respect to a covered affiliate credit enhancement and the direct QFC that the covered affiliate credit enhancement supports, a party that is a beneficiary of the covered affiliate support provider's obligation(s) under the covered affiliate credit enhancement.

(f) *Additional creditor protections for supported QFCs.* Notwithstanding paragraph (b) of this section, with respect to a covered direct QFC that is supported by a covered affiliate credit enhancement, the covered direct QFC and the covered affiliate credit enhancement may permit the exercise of a default right after the stay period that is related, directly or indirectly, to the covered affiliate support provider becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding if:

(1) The covered affiliate support provider that remains obligated under the covered affiliate credit enhancement becomes subject to a receivership, insolvency, liquidation, resolution, or similar proceeding, other than a Chapter 11 proceeding;

(2) Subject to paragraph (h) of this section, the transferee, if any, becomes subject to a receivership, insolvency, liquidation, resolution, or similar proceeding;

(3) The covered affiliate support provider does not remain, and a transferee does not become, obligated to the same, or substantially similar, extent as the covered affiliate support provider was obligated immediately prior to entering the receivership, insolvency, liquidation, resolution, or similar proceeding with respect to:

(i) The covered affiliate credit enhancement;

(ii) All other covered affiliate credit enhancements provided by the covered affiliate support provider in support of other covered direct QFCs between the direct party and the supported party under the covered affiliate credit enhancement referenced in paragraph (f)(3)(i) of this section; and

(iii) All covered affiliate credit enhancements provided by the covered affiliate support provider in support of covered direct QFCs between the direct party and affiliates of the supported party referenced in paragraph (f)(3)(ii) of this section; or

(4) In the case of a transfer of the covered affiliate credit enhancement to a transferee,

(i) All of the ownership interests of the direct party directly or indirectly held by the covered affiliate support provider are not transferred to the transferee; or

(ii) Reasonable assurance has not been provided that all or substantially all of the assets of the covered affiliate support provider (or net proceeds therefrom), excluding any assets reserved for the payment of costs and expenses of administration in the receivership, insolvency, liquidation, resolution, or similar proceeding, will be transferred or sold to the transferee in a timely manner.

(g) *Definitions relevant to the additional creditor protections for supported QFCs*—(1) *Stay period.* Stay period means, with respect to a receivership, insolvency, liquidation, resolution, or similar proceeding, the period of time beginning on the commencement of the proceeding and ending at the later of 5:00 p.m. (eastern time) on the business day following the date of the commencement of the proceeding and 48 hours after the commencement of the proceeding.

(2) *Business day.* Business day means a day on which commercial banks in the jurisdiction the proceeding is commenced are open for general business (including dealings in foreign exchange and foreign currency deposits).

(3) *Transferee.* Transferee means a person to whom a covered affiliate credit enhancement is transferred upon the covered affiliate support provider entering a receivership, insolvency, liquidation, resolution, or similar proceeding or thereafter as part of the resolution, restructuring, or reorganization involving the covered affiliate support provider.

(h) *Creditor protections related to FDI Act proceedings.* Notwithstanding paragraphs (b), (d), and (f) of this section, with respect to a covered direct QFC that is supported by a covered affiliate credit enhancement, the covered direct QFC and the covered affiliate credit enhancement may permit the exercise of a default right that is related, directly or indirectly, to the covered affiliate support provider becoming subject to FDI Act proceedings:

(1) After the FDI Act stay period, if the covered affiliate credit enhancement is not transferred pursuant to 12 U.S.C. 1821(e)(9)–(e)(10) and any regulations promulgated thereunder; or

(2) During the FDI Act stay period, if the default right may only be exercised so as to permit the supported party under the covered affiliate credit enhancement to suspend performance with respect to the supported party's obligations under the covered direct QFC to the same extent as the supported party would be entitled to do if the covered direct QFC were with the covered affiliate support provider and were treated in the same manner as the covered affiliate credit enhancement.

(i) *Prohibited terminations.* A covered QFC must require, after an affiliate of the direct party has become subject to a receivership, insolvency, liquidation, resolution, or similar proceeding:

(1) The party seeking to exercise a default right to bear the burden of proof that the exercise is permitted under the covered QFC; and

(2) Clear and convincing evidence or a similar or higher burden of proof to exercise a default right.

§ 252.85 Approval of enhanced creditor protection conditions.

(a) *Protocol compliance.* (1) Unless the Board determines otherwise based on the specific facts and circumstances, a covered QFC is deemed to comply with this subpart if it is amended by the universal protocol or the U.S. protocol.

(2) A covered QFC will be deemed to be amended by the universal protocol for purposes of paragraph (a)(1) of this section notwithstanding the covered QFC being amended by one or more Country Annexes, as the term is defined in the universal protocol.

(3) For purposes of paragraphs (a)(1) and (2) of this section:

(i) The universal protocol means the ISDA 2015 Universal Resolution Stay Protocol, including the Securities Financing Transaction Annex and Other Agreements Annex, published by the International Swaps and Derivatives Association, Inc., as of May 3, 2016, and minor or technical amendments thereto;

(ii) The U.S. protocol means a protocol that is the same as the universal protocol other than as

provided in paragraphs (a)(3)(ii)(A)–(F) of this section.

(A) The provisions of Section 1 of the attachment to the universal protocol may be limited in their application to covered entities and excluded banks and may be limited with respect to resolutions under the Identified Regimes, as those regimes are identified by the universal protocol;

(B) The provisions of Section 2 of the attachment to the universal protocol may be limited in their application to covered entities and excluded banks;

(C) The provisions of Section 4(b)(i)(A) of the attachment to the universal protocol must not apply with respect to U.S. special resolution regimes;

(D) The provisions of Section 4(b) of the attachment to the universal protocol may only be effective to the extent that the covered QFCs affected by an adherent's election thereunder would continue to meet the requirements of this subpart;

(E) The provisions of Section 2(k) of the attachment to the universal protocol must not apply; and

(F) The U.S. protocol may include minor and technical differences from the universal protocol and differences necessary to conform the U.S. protocol to the differences described in paragraphs (a)(3)(ii)(A)–(E) of this section;

(iii) Amended by the universal protocol or the U.S. protocol, with respect to covered QFCs between adherents to the protocol, includes amendments through incorporation of the terms of the protocol (by reference or otherwise) into the covered QFC; and

(iv) The attachment to the universal protocol means the attachment that the universal protocol identifies as ''ATTACHMENT to the ISDA 2015 UNIVERSAL RESOLUTION STAY PROTOCOL.''

(b) *Proposal of enhanced creditor protection conditions.* (1) A covered entity may request that the Board approve as compliant with the requirements of §§ 252.83 and 252.84 proposed provisions of one or more forms of covered QFCs, or proposed amendments to one or more forms of covered QFCs, with enhanced creditor protection conditions.

(2) Enhanced creditor protection conditions means a set of limited exemptions to the requirements of § 252.84(b) that is different than that of paragraphs (d), (f), and (h) of § 252.84.

(3) A covered entity making a request under paragraph (b)(1) of this section must provide:

(i) An analysis of the proposal that addresses each consideration in paragraph (d) of this section;

(ii) A written legal opinion verifying that proposed provisions or amendments would be valid and enforceable under applicable law of the relevant jurisdictions, including, in the case of proposed amendments, the validity and enforceability of the proposal to amend the covered QFCs; and

(iii) Any other relevant information that the Board requests.

(c) *Board approval.* The Board may approve, subject to any conditions or commitments the Board may set, a proposal by a covered entity under paragraph (b) of this section if the proposal, as compared to a covered QFC that contains only the limited exemptions in paragraphs of (d), (f), and (h) of § 252.84 or that is amended as provided under paragraph (a) of this section, would prevent or mitigate risks to the financial stability of the United States that could arise from the failure of a global systemically important BHC, a global systemically important foreign banking organization, or the subsidiaries of either and would protect the safety and soundness of bank holding companies and state member banks to at least the same extent.

(d) *Considerations.* In reviewing a proposal under this section, the Board may consider all facts and circumstances related to the proposal, including:

(1) Whether, and the extent to which, the proposal would reduce the resiliency of such covered entities during distress or increase the impact on U.S. financial stability were one or more of the covered entities to fail;

(2) Whether, and the extent to which, the proposal would materially decrease the ability of a covered entity, or an affiliate of a covered entity, to be resolved in a rapid and orderly manner in the event of the financial distress or failure of the entity that is required to submit a resolution plan;

(3) Whether, and the extent to which, the set of conditions or the mechanism in which they are applied facilitates, on an industry-wide basis, contractual modifications to remove impediments to resolution and increase market certainty, transparency, and equitable treatment with respect to the default rights of non-defaulting parties to a covered QFC;

(4) Whether, and the extent to which, the proposal applies to existing and future transactions;

(5) Whether, and the extent to which, the proposal would apply to multiple forms of QFCs or multiple covered entities;

(6) Whether the proposal would permit a party to a covered QFC that is within the scope of the proposal to adhere to the proposal with respect to only one or a subset of covered entities;

(7) With respect to a supported party, the degree of assurance the proposal provides to the supported party that the material payment and delivery obligations of the covered affiliate credit enhancement and the covered direct QFC it supports will continue to be performed after the covered affiliate support provider enters a receivership, insolvency, liquidation, resolution, or similar proceeding;

(8) The presence, nature, and extent of any provisions that require a covered affiliate support provider or transferee to meet conditions other than material payment or delivery obligations to its creditors;

(9) The extent to which the supported party's overall credit risk to the direct party may increase if the enhanced creditor protection conditions are not met and the likelihood that the supported party's credit risk to the direct party would decrease or remain the same if the enhanced creditor protection conditions are met; and

(10) Whether the proposal provides the counterparty with additional default rights or other rights.

§ 252.86 Foreign bank multi-branch master agreements.

(a) *Treatment of foreign bank multi-branch master agreements.* With respect to a U.S. branch or U.S. agency of a global systemically important foreign banking organization, a foreign bank multi-branch master agreement that is a covered QFC solely because the master agreement permits agreements or transactions that are QFCs to be entered into at one or more U.S. branches or U.S. agencies of the global systemically important foreign banking organization will be considered a covered QFC for purposes of this subpart only with respect to such agreements or transactions booked at such U.S. branches and U.S. agencies.

(b) *Definition of foreign bank multi-branch master agreements.* A foreign bank multi-branch master agreement means a master agreement that permits a U.S. branch or U.S. agency and another place of business of a foreign bank that is outside the United States to enter transactions under the agreement.

§ 252.87 Identification of global systemically important foreign banking organizations.

(a) For purposes of this subpart, a top-tier foreign banking organization that is

or controls a covered company (as defined at 12 CFR 243.2(f)) is a global systemically important foreign banking organization if any of the following conditions is met:

(1) The top-tier foreign banking organization determines, pursuant to paragraph (c) of this section, that the top-tier foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology; or

(2) The Board, using information available to the Board, determines:

(i) That the top-tier foreign banking organization would be a global systemically important banking organization under the global methodology;

(ii) That the top-tier foreign banking organization, if it were subject to the Board's Regulation Q (part 217 of this chapter), would be identified as a global systemically important BHC under § 217.402 of the Board's Regulation Q; or

(iii) That any U.S. intermediate holding company controlled by the top-tier foreign banking organization, if the U.S. intermediate holding company is or were subject to § 217.402 of the Board's Regulation Q, is or would be identified as a global systemically important BHC.

(b) Each top-tier foreign banking organization that determines pursuant to paragraph (c) of this section that it has the characteristics of a global systemically important banking organization under the global methodology must notify the Board of the determination by January 1 of each calendar year.

(c) A top-tier foreign banking organization that is or controls a covered company (as defined at 12 CFR 243.2(f)) and prepares or reports for any purpose the indicator amounts necessary to determine whether the top-tier foreign banking organization is a global systemically important banking organization under the global methodology must use the data to determine whether the top-tier foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology.

(d) Each top-tier foreign banking organization that controls a U.S. intermediate holding company and that meets the requirements of § 252.153(b)(5) and (6) also meets the requirements of paragraphs (b) and (c) of this section.

§ 252.88 Exclusion of certain QFCs.

(a) *Exclusion of QFCs with FMUs.* Notwithstanding § 252.82, a covered entity is not required to conform to the requirements of this subpart a covered QFC to which:

(1) A CCP is party; or

(2) Each party (other than the covered entity) is an FMU.

(b) *Exclusion of certain excluded bank QFCs.* If a covered QFC is also a covered QFC under parts 47 or 382 of this title that an affiliate of the covered entity is also required to conform pursuant to parts 47 or 382 of this title and the covered entity is:

(1) The affiliate credit enhancement provider with respect to the covered QFC, then the covered entity is required to conform the credit enhancement to the requirements of this subpart but is not required to conform the direct QFC to the requirements of this subpart; or

(2) The direct party to which the excluded bank is the affiliate credit enhancement provider, then the covered entity is required to conform the direct QFC to the requirements of this subpart but is not required to conform the credit enhancement to the requirements of this subpart.

(c) *Exclusion of certain contracts.* Notwithstanding § 252.82, a covered entity is not required to conform the following types of contracts or agreements to the requirements of this subpart:

(1) An investment advisory contract that:

(i) Is with a retail customer or counterparty;

(ii) Does not explicitly restrict the transfer of the contract (or any QFC entered pursuant thereto or governed thereby, or any interest or obligation in or under, or any property securing, any such QFC or the contract) from the covered entity except as necessary to comply with section 205(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(a)(2)); and

(iii) Does not explicitly provide a default right with respect to the contract or any QFC entered pursuant thereto or governed thereby.

(2) A warrant that:

(i) Evidences a right to subscribe to or otherwise acquire a security of the covered entity or an affiliate of the covered entity; and

(ii) Was issued prior to November 13, 2017.

(d) *Exemption by order.* The Board may exempt by order one or more covered entities from conforming one or more contracts or types of contracts to one or more of the requirements of this subpart after considering:

(1) The potential impact of the exemption on the ability of the covered entity(ies), or affiliates of the covered entity(ies), to be resolved in a rapid and orderly manner in the event of the financial distress or failure of the entity that is required to submit a resolution plan;

(2) The burden the exemption would relieve; and

(3) Any other factor the Board deems relevant.

By order of the Board of Governors of the Federal Reserve System, September 1, 2017.

Ann E. Misback,

Secretary of the Board.

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