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The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2016-9451; Product Identifier 2016-NE-24-AD; Amendment 39-19058; AD 2017-20-01]

RIN 2120-AA64

Airworthiness Directives; Honeywell International Inc. Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Honeywell International Inc. (Honeywell) TFE731-20 and TFE731-40 turboprop engines. This AD was prompted by two fan disks found with a manufacturing-caused flaw. This AD requires removing affected fan disks and replacing fan disks with a part eligible for installation. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 2, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 2, 2017.

ADDRESSES: For service information identified in this final rule, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ 85034-2802; phone: 800-601-3099; Internet: <https://myaerospace.honeywell.com/wps/portal>. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238-7125. It is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-9451.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-9451; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Joseph Costa, Aerospace Engineer, Los Angeles ACO Branch, FAA, 3960 Paramount Blvd., Lakewood, CA 90712-4137; phone: 562-627-5246; fax: 562-627-5210; email: joseph.costa@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Honeywell TFE731-20 and TFE731-40 turboprop engines. The NPRM published in the **Federal Register** on March 7, 2017 (82 FR 12755). The NPRM was prompted by two fan disks found with a manufacturing-caused flaw. The NPRM proposed to require removing the affected fan disks, performing a one-time inspection, and replacing fan disks that fail inspection. We are issuing this AD to prevent uncontained failure of the fan disks, damage to the engine, and damage to the airplane.

Comments

We gave the public the opportunity to participate in developing this final rule. We have considered the comment received.

Miscellaneous Comment

We received a comment regarding Honeywell as a company that was not relevant to this AD. No further discussion is required.

Changes to This AD

Based on further review, we made the following changes to this AD.

We corrected the cost per product estimate under “On-condition costs” in the Costs of Compliance section of the NPRM from \$300,510 to \$50,085 in this AD. The cost per product in the NPRM incorrectly estimated the cost for six engines rather than for one engine. On further review, we also redefined the work hours needed to install the new or reworked fan disk. The 8 work hours to inspect the fan disk were listed as a separate item in the NPRM but, in this final rule, we added these work hours to the estimated cost of installing the reworked or new fan disk. The overall estimated cost of this work per engine remains the same.

We corrected the product identification from “Honeywell International Inc. (Type Certificate previously held by AlliedSignal Inc., Garrett Engine Division; Garrett Turbine Engine Company; and AiResearch Manufacturing Company of Arizona)” to “Honeywell International Inc. (Type Certificate previously held by AlliedSignal Inc.).”

We removed paragraph (g)(4) of the NPRM which required inspection of the removed fan disks in accordance with paragraph 3.D.(2) in the Accomplishment Instructions of Honeywell SB TFE731-72-5256, Revision 0, dated October 7, 2016. Although fan disks may be returned to Honeywell for inspection and rework to become eligible for installation, that is not a requirement of this AD.

We revised the definition of “parts eligible for installation” in paragraph (g) of this AD to read: “For the purposes of this AD, parts eligible for installation are: (i) Fan disks not listed in the Accomplishment Instructions, Table 9, in Honeywell SB TFE731-72-5256, Revision 0, dated October 7, 2016; or (ii) fan disks listed in Table 9 that have been inspected, reworked, and marked with “T43374” adjacent to the P/N or S/N. Guidance on returning affected parts to Honeywell for inspection and rework is found in the Accomplishment Instructions, paragraph 3.D., of Honeywell SB TFE731-72-5256.” This definition clarifies that fan disks with a P/N not affected by this AD, as well as parts that have been reworked and remarked, are eligible for installation.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the

public interest require adopting this final rule as proposed for minor editorial changes and the additional changes explained above. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

We reviewed Honeywell Service Bulletin (SB) TFE731-72-5256, Revision 0, dated October 7, 2016. The SB identifies affected fan disks by serial number and describes procedures for removing, inspecting, and replacing the fan disks. This service information is

available by the means identified in the ADDRESSES section.

Costs of Compliance

We estimate that this AD affects 61 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove fan disk	8 work-hours × \$85 per hour = \$680	\$0	\$680	\$41,480
Install reworked or new fan disk	26 work-hours × \$85 per hour = \$2,210	0	2,210	134,810

We estimate the following costs to do any necessary disk replacements that

would be required based on the results of the required inspection. We estimate

that 6 engines will need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace non-serviceable disks with new fan disk	1 work-hour × \$85 per hour = \$85	\$50,000	\$50,085

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

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance

of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017-20-01 Honeywell International Inc. (Type Certificate previously held by AlliedSignal Inc.): Amendment 39-19058; Docket No. FAA-2016-9451; Product Identifier 2016-NE-24-AD.

(a) Effective Date

This AD is effective November 2, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Honeywell International Inc. (Honeywell) TFE731-20 and TFE731-40 turbofan engines, with a fan disk, part number (P/N) 3060287-2, and a

serial number (S/N) listed in Table 9 of Honeywell Service Bulletin (SB) TFE731-72-5256, Revision 0, dated October 7, 2016, that do not have "T43374" marked adjacent to the engine P/N or S/N.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by a report of two fan disks found with surface rollovers in the dovetail slot area. We are issuing this AD to prevent uncontained failure of the fan disks, 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

Remove the fan disk using the following criteria:

(1) Remove fan disks with 9,000 cycles-since-new (CSN) or more on the effective date of this AD, within 100 cycles-in-service (CIS), or at the next engine shop visit, or at next access, whichever occurs first, after the effective date of this AD.

(2) Remove fan disks with between 8,000 and 8,999 CSN, inclusive, on the effective date of this AD, within 9,100 CSN or within 1,000 CIS, or at the next engine shop visit, or at next access, whichever occurs first, after the effective date of this AD.

(3) Remove fan disks with fewer than 8,000 CSN, on the effective date of this AD, before exceeding 9,000 CSN, or at the next engine shop visit, or at next access, whichever occurs first, after the effective date of this AD.

(4) Replace all removed fan disks with a part eligible for installation.

(h) Definitions

(1) For the purposes of this AD, an engine shop visit is defined as the removal of the tie-shaft nut from the engine.

(2) For the purposes of this AD, access is defined as the removal of the fan rotor assembly from the engine.

(3) For the purposes of this AD, parts eligible for installation are:

(i) fan disks not listed in the Accomplishment Instructions, Table 9, in Honeywell SB TFE731-72-5256, Revision 0, dated October 7, 2016; or

(ii) fan disks listed in Table 9, in Honeywell SB TFE731-72-5256, Revision 0, dated October 7, 2016, that have been inspected, reworked, and marked with "T43374" adjacent to the P/N or S/N. Guidance on returning affected parts to Honeywell for inspection and rework is found in the Accomplishment Instructions, paragraph 3.D., of Honeywell SB TFE731-72-5256.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures

found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the Los Angeles ACO Branch, send it to the attention of the person identified in paragraph (j) of this AD.

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

(j) Related Information

For more information about this AD, contact Joseph Costa, Aerospace Engineer, Los Angeles ACO Branch, FAA, 3960 Paramount Blvd., Lakewood, CA 90712-4137; phone: 562-627-5246; fax: 562-627-5210; email: joseph.costa@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Honeywell Service Bulletin TFE731-72-5256, Revision 0, dated October 7, 2016.

(ii) Reserved.

(3) For Honeywell service information identified in this AD, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ 85034-2802; phone: 800-601-3099; Internet: <https://myaerospace.honeywell.com/wps/portal>.

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

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

Issued in Burlington, Massachusetts, on September 21, 2017.

Robert J. Ganley,

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

[FR Doc. 2017-20776 Filed 9-27-17; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2017-0753; Product Identifier 2017-NE-25-AD; Amendment 39-19046; AD 2017-2017-19-16]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Rolls-Royce plc (RR) RB211 Trent 553-61, Trent 553A2-61, Trent 556-61, Trent 556A2-61, Trent 556B-61, Trent 556B2-61, Trent 560-61, and Trent 560A2-61 turbofan engines. This AD requires replacement of the low-pressure compressor (LPC) case A-frame hollow locating pins. This AD was prompted by LPC case A-frame hollow locating pins that may have reduced integrity due to incorrect heat treatment. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD becomes effective October 13, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publications listed in this AD as of October 13, 2017.

We must receive comments on this AD by November 13, 2017.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251.

For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011-44-1332-242424; fax: 011-44-1332-249936; email: http://www.rolls-royce.com/contact/civil_team.jsp; Internet: <https://customers.rolls-royce.com/public/rollsroycecare>. You may view this service information at the FAA, Engine and Propeller Standards Branch, Policy and Innovation Division,

1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781-238-7125. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0753.

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-2017-0753; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), regulatory evaluation, any comments received, and other information. The 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: Robert Green, Aerospace Engineer, FAA, ECO Branch, Compliance and Airworthiness Division, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7754; fax: 781-238-7199; email: robert.green@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the ADDRESSES section. Include "Docket No. FAA-2017-0753; Product Identifier 2017-NE-25-AD" at the beginning of your comments. We specifically invite comments on the

overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD 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 with FAA personnel concerning this AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2017-0012, dated January 25, 2017 (referred to hereinafter as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

All low pressure compressor (LPC) case A-frame hollow locating pins, Part Number (P/N) FK32009, manufactured since 2012 have potentially been subjected to incorrect heat treatment. This may have reduced the integrity of the pin such that in a Fan Blade Off (FBO) event it is unable to withstand the applied loads. This condition, if not corrected, could lead to loss of location of the A-frame following an FBO event, possibly resulting in engine separation, loss of thrust reverser unit, release of high-energy debris, or an uncontrolled fire. To address this potential unsafe condition, RR identified the affected engines that have these A-frame hollow locating pins installed and published Alert NMSB RB.211-72-AJ451, providing instructions for replacement of these pins. For the reason described above, this AD requires a one-time replacement of the A-frame hollow locating pins P/N FK32009 on the affected engines.

You may obtain further information by examining the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0753.

Related Service Information Under 1 CFR Part 51

RR has issued Alert Non Modification Service Bulletin (NMSB) No. RB.211-72-AJ451, Revision 1, dated March 10, 2017. The SB describes procedures for replacement of all non-conforming A-frame locating pins. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of the United Kingdom, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires replacement of all non-conforming A-frame locating pins.

FAA's Determination of the Effective Date

No domestic operators use this product. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Costs of Compliance

We estimate that this AD affects no engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
A-frame pin replacement	4 work-hours × \$85 per hour = \$340.00	\$450.00	\$790.00	\$0

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

For the reasons discussed above, I certify this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017-19-16 Rolls-Royce plc: Amendment 39-19046; Docket No. FAA-2017-0753; Product Identifier 2017-NE-25-AD.

(a) Effective Date

This AD is effective October 13, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce plc (RR) RB211 Trent 553-61, Trent 553A2-61, Trent 556-61, Trent 556A2-61, Trent 556B-61, Trent 556B2-61, Trent 560-61, and Trent 560A2-61 turbofan engines with an engine serial number (ESN) listed in Section 1.A., Effectivity, of RR Alert Non Modification Service Bulletin (NMSB) RB.211-72-AJ451, Revision 1, dated March 10, 2017.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Reason

This AD was prompted by low-pressure compressor (LPC) case A-frame hollow locating pins that may have reduced integrity due to incorrect heat treatment. We are issuing this AD to prevent failure of the locating pins, engine separation, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

At the next scheduled maintenance inspection after the effective date of this AD, but no later than January 1, 2018, replace each affected LPC case A-frame hollow locating pin with a part eligible for installation using Section 3, Accomplishment Instructions, of RR Alert NMSB RB.211-72-AJ451, Revision 1, dated March 10, 2017.

(h) Installation Prohibition

After the effective date of this AD, do not install any engine with an affected LPC case A-frame hollow locating pin.

(i) Definitions

For the purposes of this AD:

- (1) An affected LPC case A-frame hollow locating pin is part number (P/N) FK32009, except those with an original RR authorized release certificate dated July 5, 2016, or later.
- (2) A part eligible for installation is an LPC case A-frame hollow locating pin with an original RR authorized release certificate dated July 5, 2016, or later.

(j) 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 (k)(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.

(k) Related Information

(1) For more information about this AD, contact Robert Green, Aerospace Engineer, FAA, ECO Branch, Compliance and Airworthiness Division, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7754; fax: 781-238-7199; email: robert.green@faa.gov.

(2) Refer to MCAI European Aviation Safety Agency AD 2017-0012, dated January 25, 2017, for more information. You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA-2017-0753.

(l) Material Incorporated by Reference

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

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

- (i) Rolls-Royce plc (RR) Alert Non Modification Service Bulletin RB.211-72-AJ451, Revision 1, dated March 10, 2017.
- (ii) Reserved.

(3) For RR service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011-44-1332-242424; fax: 011-44-1332-249936; email: http://www.rolls-royce.com/contact/civil_team.jsp; Internet: <https://customers.rolls-royce.com/public/rollsroycecare>.

(4) You may view this service information at FAA, Engine and Propeller Standards Branch, Policy and Innovation Division, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781-238-7125.

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

Issued in Burlington, Massachusetts, on September 13, 2017.

Robert J. Ganley,

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

[FR Doc. 2017-20702 Filed 9-27-17; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection****DEPARTMENT OF THE TREASURY****19 CFR Part 12**

[CBP Dec. 17–14]

RIN 1515–AE33

Extension of Import Restrictions on Archaeological and Ecclesiastical Ethnological Materials From Guatemala**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.**ACTION:** Final rule.

SUMMARY: This final rule amends U.S. Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on certain archaeological and ecclesiastical ethnological materials from Guatemala. These restrictions, which were last extended and revised by CBP Dec. 12–17, are due to expire on September 29, 2017, unless extended. The Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State (Department of State), has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, the restrictions will remain in effect for an additional five years, and the CBP regulations are being amended to indicate this additional extension. These restrictions are being extended pursuant to determinations of the Department of State under the terms of the Convention on Cultural Property Implementation Act, which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. CBP Dec. 12–17 contains the Designated List of archaeological and ecclesiastical ethnological materials that describes the articles to which the restrictions apply.

DATES: Effective September 29, 2017.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0215, lisa.burley@cbp.dhs.gov. For operational aspects, William R. Scopa, Branch Chief, Partner Government Agency Branch, Trade Policy and Programs, Office of Trade, (202) 863–6554, william.r.scopa@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:**Background**

Pursuant to the provisions of the Convention on Cultural Property Implementation Act (hereafter, the Cultural Property Implementation Act or the Act) (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*), which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter, the Convention), in U.S. law, the United States may enter into international agreements with other States Party to the Convention to impose import restrictions on eligible archaeological and ethnological materials under procedures and requirements prescribed by the Act. Under the Act and applicable CBP regulations (19 CFR 12.104g), the restrictions are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States (19 U.S.C. 2602(b)). This period may be extended for additional periods, not to exceed five years, if it is determined that the factors justifying the initial agreement still pertain and no cause for suspension of the agreement exists (19 U.S.C. 2602(e); 19 CFR 12.104g(a)).

In certain limited circumstances, the Cultural Property Implementation Act authorizes the imposition of restrictions on an emergency basis (19 U.S.C. 2603). Under the Act and applicable CBP regulations (19 CFR 12.104g(b)), emergency restrictions are effective for no more than five years from the date of the State Party's request and may be extended for three years where it is determined that the emergency condition continues to apply with respect to the covered materials (19 U.S.C. 2603(c)(3)); such restrictions may also be continued pursuant to an agreement concluded within the meaning of the Act (19 U.S.C. 2603(c)(4)).

On April 15, 1991, under the authority of the Cultural Property Implementation Act, the former U.S. Customs Service published Treasury Decision (T.D.) 91–34 in the **Federal Register** (56 FR 15181) imposing emergency import restrictions on Pre-Columbian archaeological artifacts from the Peten Region of Guatemala and accordingly amended 19 CFR 12.104g(b) pertaining to emergency import restrictions. These restrictions were effective for a period of five years and were subsequently extended for a three-year period by publication of T.D. 94–

84 in the **Federal Register** (59 FR 54817).

On September 29, 1997, the United States entered into a bilateral agreement with Guatemala concerning the imposition of import restrictions on archaeological materials from the Pre-Columbian cultures of Guatemala (the 1997 Agreement). The 1997 Agreement included among the materials covered by the restrictions the archaeological materials then subject to the emergency restrictions imposed by T.D. 91–34. On October 3, 1997, the former United States Customs Service published T.D. 97–81 in the **Federal Register** (62 FR 51771), which amended 19 CFR 12.104g(a) to reflect the imposition of restrictions on these materials and included a list designating the types of archaeological materials covered by the restrictions. These restrictions were to be effective through September 29, 2002. (T.D. 97–81 also removed the emergency restrictions for Guatemala from the CBP regulations.)

The restrictions were subsequently extended, in 2002 by T.D. 02–56 (67 FR 61259); and in 2007 by Customs and Border Protection Decision (CBP Dec.) 07–79 (72 FR 54538), to September 29, 2012.

In 2012, the Agreement was amended to include certain ecclesiastical ethnological materials of the Conquest and Colonial Periods of Guatemala, c. A.D. 1524 to 1821. On September 28, 2012, CBP published CBP Dec. 12–17 in the **Federal Register** (77 FR 59541), effective on September 29, 2012, amending CBP regulations to reflect the extension of import restrictions on archaeological materials and the addition of ecclesiastical ethnological materials covered by the restrictions (*see* 19 U.S.C. 2604, authorizing the Secretary of the Treasury, by regulation, to promulgate and, when appropriate, revise the list of designated archaeological and/or ethnological materials covered by an agreement between State Parties). The import restrictions are due to expire on September 29, 2017.

On July 28, 2017, after reviewing the findings and recommendations of the Cultural Property Advisory Committee, the Acting Assistant Secretary for Educational and Cultural Affairs, Department of State, concluding that the cultural heritage of Guatemala continues to be in jeopardy from pillage of certain archaeological materials and certain ecclesiastical ethnological materials, made the necessary statutory determinations, and decided to extend the agreement with Guatemala for an additional five-year period to September 29, 2022. Diplomatic notes have been

exchanged that reflect the extension of the agreement. Accordingly, CBP is amending 19 CFR 12.104g(a) in order to reflect the extension of the import restrictions pursuant to the agreement.

The Designated List of Archaeological Materials and Ecclesiastical Ethnological Materials from Guatemala covered by these import restrictions is set forth in CBP Dec. 12–17. The Designated List may also be found online at <https://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements/guatemala>.

The restrictions on the importation of these archaeological and ecclesiastical ethnological materials from Guatemala are to continue in effect for an additional five years. Importation of such material continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). In addition, CBP has determined that such notice or public procedure would be impracticable and contrary to the public interest because the action being taken is essential to avoid interruption of the application of the existing import restrictions (5 U.S.C. 553(b)(B)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Orders 12866 and 13771

Because this rule involves a foreign affairs function of the United States, it is not subject to either Executive Order 12866 or Executive Order 13771.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *
Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;
* * * * *

§ 12.104g(a) [Amended]

■ 2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for Guatemala by adding the words “extended by CBP Dec. 17–14” after the words “CBP Dec. 12–17” in the column headed “Decision No.”.

Kevin K. McAleenan,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: September 25, 2017.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2017–20785 Filed 9–27–17; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 490

[Docket No. FHWA–2013–0054]

RIN 2125–AF54

National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final regulation; announcement of effective date.

SUMMARY: This document announces the effective date for specific portions of the National Performance Management measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program Final Rule (PM#3).

DATES: The effective date of the amendments to 23 CFR 490.105(c)(5) and (d)(1)(v), 490.107(b)(1)(ii)(H), (b)(2)(ii)(f), (b)(3)(ii)(I), and (c)(4), 490.109(d)(1)(v) and (f)(1)(v), 490.503(a)(2), 490.505 (Definition of Greenhouse gas (GHG)), 490.507(b), 490.509(f), (g) and (h), 490.511(a)(2), (c), (d), and (f), and 490.513(d) published on January 18, 2017, at 82 FR 5970, is September 28, 2017.

FOR FURTHER INFORMATION CONTACT: Christopher Richardson, Assistant Chief Counsel for Legislation, Regulations, and General Law, Office of Chief Counsel, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–0761. Office hours are from 8:00 a.m. to 4:30 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, the Final Rule, and all background material may be viewed online at <http://www.regulations.gov> using the docket numbers listed above. A copy of this document will be placed on the docket. Electronic retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's Web site at <http://www.ofr.gov> and the Government Publishing Office's Web site at <http://www.gpo.gov>.

Background

On May 19, 2017, at 82 FR 22879, FHWA announced that the majority of the PM#3 Final Rule would become effective on May 20, 2017, and that the portions of the PM#3 Final Rule pertaining to the measure on the percent change in CO₂ emissions from the reference year 2017, generated by on-road mobile sources on the National Highway System (the GHG) measure would be further suspended pending additional rulemaking.

This document confirms that the following sections of the Final Rule are effective as of September 28, 2017:

1. 23 CFR 490.105(c)(5)
2. 23 CFR 490.105(d)(1)(v)
3. 23 CFR 490.107(b)(1)(ii)(H)
4. 23 CFR 490.107(b)(2)(ii)(f)
5. 23 CFR 490.107(b)(3)(ii)(I)
6. 23 CFR 490.107(c)(4)
7. 23 CFR 490.109(d)(1)(v)
8. 23 CFR 490.109(f)(1)(v)
9. 23 CFR 490.503(a)(2)

- 10. 23 CFR 490.505 (Definition of *Greenhouse gas (GHG)*)
- 11. 23 CFR 490.507(b)
- 12. 23 CFR 490.509(f)
- 13. 23 CFR 490.509(g)
- 14. 23 CFR 490.509(h)
- 15. 23 CFR 490.511(a)(2)
- 16. 23 CFR 490.511(c)
- 17. 23 CFR 490.511(d)
- 18. 23 CFR 490.511(f)
- 19. 23 CFR 490.513(d).

The FHWA recognizes that there are short timeframes to comply with the October 1, 2018 reporting deadline. However, FHWA expects that the burden to comply with the upcoming reporting deadline will be minimal, consisting mostly of preliminary target-setting activities using existing data sources.

The FHWA has initiated additional rulemaking procedures proposing to repeal the GHG measure (RIN 2125-AF76) and anticipates publishing an NPRM in 2017 with a goal of issuing a Final Rule in Spring 2018.

Waiver of Rulemaking

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), FHWA generally offers interested parties the opportunity to comment on proposed regulations and publishes rules not less than 30 days before their effective dates. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking or delay effective dates when the agency, for good cause, finds that the requirement is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B) and (d)(3)). There is good cause to waive these requirements here as unnecessary, because this rule merely ceases the suspension of the Final Rule pending additional rulemaking, as provided for in the May 19, 2017 document at 82 FR 22879, thus putting in effect the requirements of the above-referenced sections of the Final Rule as previously promulgated after notice and comment. The cessation of the suspension is therefore not significant in nature and impact, and does not impose new burdens on State departments of transportation and Metropolitan Planning Organizations.

List of Subjects in 23 CFR Part 490

Bridges, Highway safety, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

Issued on: September 22, 2017.

Brandye L. Hendrickson,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2017-20804 Filed 9-25-17; 4:15 pm]

BILLING CODE 4910-22-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1610

RIN 3046-AA90

Availability of Records

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (“EEOC” or “Commission”) is issuing a final rule revising its Freedom of Information Act (FOIA) regulations in order to implement the substantive and procedural changes to the FOIA identified in the FOIA Improvement Act of 2016 and update two district office addresses and the Office of Legal Counsel’s fax number.

DATES: Effective September 28, 2017.

FOR FURTHER INFORMATION CONTACT: Stephanie D. Garner, Assistant Legal Counsel, FOIA Programs, or Draga G. Anthony, Senior Attorney Advisor, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission, at (202) 663-4640 (voice) or (202) 663-7026 (TTY). These are not toll-free telephone numbers. This final rule also is available in the following formats: Large print, Braille, audiotape, and electronic file on computer disk. Requests for this final rule in an alternative format should be made to EEOC’s Publications Center at 1-800-669-3362 (voice) or 1-800-800-3302 (TTY).

SUPPLEMENTARY INFORMATION:

Introduction

On December 29, 2016, EEOC published in the **Federal Register** an interim final rule setting forth revisions to EEOC’s FOIA regulations at 29 CFR part 1610. 81 FR 95869 (2016). The purpose of the revisions is to update the Commission’s FOIA regulations so that they are consistent with current Commission practice in responding to FOIA requests as reflected in the FOIA Improvement Act of 2016. The revisions also are intended to update two district office addresses and the Office of Legal Counsel’s fax number. The interim final rule sought public comments which were due on or before January 30, 2017.

EEOC received four comments in response to the interim final rule. Two comments were submitted by an individual, and the remaining two comments were submitted by the National Archives and Records Administration’s Office of Government Information Services (hereinafter “OGIS”).

The individual commenter suggested that EEOC reconsider the fifteen cent per page duplication fee charged for copies. This comment is outside the scope of the interim final rule, which did not propose changes to the duplication fees associated with processing FOIA requests. Therefore, the EEOC declines to change the duplication fees. The second comment asked the EEOC to remove the word “professional” in 1610.9(f)(3), which identifies the requirements of a requester seeking expedited processing. Congress strongly favors uniform FOIA regulations. The Office of Information Policy, to assist agencies in issuing uniform regulations, provided a template for agencies to utilize when revising FOIA regulations. In order to conform with the Office of Information Policy template language, the EEOC declines to remove the word “professional.”

The Commission has considered carefully the comments from OGIS and has made some changes to the final rule in response to them. The OGIS comments concerning Sections 1610.11 and 1610.13 and EEOC’s changes to the final rule are discussed in more detail below.

Section 1610.2—Statutory Requirements

The EEOC determined that the final two sentences of Section 1610.2(a) of the Draft Final Rule should be deleted. Those sentences read as follows: “As a matter of policy, the Commission may make discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by the FOIA exemption. This policy does not create any right enforceable in Court.” The final rule now more closely aligns with the statutory language at 5 U.S.C. 552(a)(8). The FOIA Improvement Act of 2016 codified the foreseeable harm standard; therefore, release of the records is no longer a matter of agency policy. Records must be released unless there is a risk of foreseeable harm.

Section 1610.5—Request for Records

Section 1610.5(a)(2), of the interim final rule said that “(2)A requester who is making a request for records about himself or herself must comply with the

verification of identity requirements as determined by the Commission. Requesters may not be required to verify their identity without guidance; therefore, the section will be deleted. Section 1610.5(b)(5) of the Interim Final Rule has also been deleted. That section said: "Where a request is not considered reasonably descriptive or requires the production of voluminous records, or necessitates the utilization of a considerable number of work hours to the detriment of the business of the Commission, the Commission may require the person making the request or such person's agent to confer with a Commission representative in order to attempt to verify the scope of the request and, if possible, narrow such request." The FOIA Improvement Act of 2016 does not require a requester to speak with the EEOC about narrowing a voluminous request. If the request is voluminous or time-intensive but the requested records are reasonably described, the EEOC must process the request.

Section 1610.11—Appeals to the Legal Counsel From Initial Denials

OGIS requested that the EEOC substitute the words "dispute resolution" for the word "mediation" in paragraph (c) Decision on appeals and paragraph (d) Engaging in dispute resolution services provided by OGIS. We have done so. This change conforms to OGIS's updated FOIA rules published on December 29, 2016.

Section 1610.13—Maintenance of Files

OGIS advised the EEOC that General Records Schedule 4.2 replaced General Records Schedule 14. Therefore, the EEOC has changed the General Records Schedule reference to 4.2.

Regulatory Procedures

Executive Order 12866

This final rule has been drafted and reviewed in accordance with Executive Order 12866, 58 FR 51735 (Sept. 30, 2003), section 1(b), Principles of Regulation, and Executive Order 13563, 76 FR 3821 (January 1, 2011), Improving Regulation and Regulatory Review. The rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866.

Paperwork Reduction Act

This final rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities, because the changes to the rule do not impose any burdens upon FOIA requesters, including those that might be small entities. Therefore, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 29 CFR Part 1610

Freedom of Information.

For the Commission.

Dated: August 20, 2017.

Victoria A. Lipnic,

Acting Chair.

For the reasons set forth in the preamble, the interim rule amending 29 CFR part 1610 which was published at 81 FR 95869 on December 29, 2016, is adopted as final with the following changes:

PART 1610—AVAILABILITY OF RECORDS

■ 1. The authority citation for part 1610 continues to read as follows:

Authority: 42 U.S.C. 2000e–12(a), 5 U.S.C. 552 as amended by Pub. L. 93–502, Pub. L. 99–570 and Pub. L. 105–231; for § 1610.15, non-search or copy portions are issued under 31 U.S.C. 9701.

■ 2. Revise § 1610.2 to read as follows:

§ 1610.2 Statutory requirements.

(a) This subpart contains the rules that the Commission will follow in processing requests for records under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget ("OMB Guidelines"). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with the Commission's Privacy Act regulations as well as under this subpart. The Commission should

administer the FOIA with a presumption of openness.

(b) As referenced in this subpart, "component" means each separate office within the Commission that is responsible for processing FOIA requests. The rules described in this regulation that apply to the Commission also apply to its components.

■ 3. Revise § 1610.5 to read as follows:

§ 1610.5 Request for records.

(a) *General information.* (1) To make a request for records, a requester should write directly to the Commission's FOIA office that maintains the records sought. A request will receive the quickest possible response if it is addressed to the Commission FOIA office that maintains the records sought. Information concerning the Commission's FOIA offices is listed at: <https://www.eeoc.gov/eeoc/foia/index.cfm> and any additional requirements for submitting a request to the agency are listed at paragraphs (b) and (d) of this section. The Commission's Web site contains instructions for submitting FOIA requests and other resources to assist requesters in determining where to send their requests.

(2) Where a request for records pertains to another individual, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (for example, a copy of a death certificate or an obituary). As an exercise of administrative discretion, the Commission can require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable Commission personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may help the Commission identify the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. Before submitting their requests, requesters may contact the Commission's District Office FOIA contact or FOIA Public Liaison to discuss the records they seek and to receive assistance in describing the records. If after receiving a request

the Commission determines that it does not reasonably describe the records sought, the Commission must inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the Commission's FOIA contact or FOIA Public Liaison. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed.

(1) A written request for inspection or copying of a record of the Commission may be presented in person, by mail, by fax, by email at FOIA@eeoc.gov, online at <https://publicportalfoiapal.eeoc.gov/palMain.aspx>, or through the Commission employee designated in § 1610.7.

(2) A request must be clearly and prominently identified as a request for information under the "Freedom of Information Act." If submitted by mail, or otherwise submitted under any cover, the envelope or other cover must be similarly identified.

(3) A respondent must always provide a copy of the "Filed" stamped court complaint when requesting a copy of a charge file. The charging party must provide a copy of the "Filed" stamped court complaint when requesting a copy of the charge file if the Notice of Right to Sue has expired as of the date of the charging party's request.

(4) Each request must contain information which reasonably describes the records sought and, when known, should contain date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number and location for the records requested in order to permit the records to be promptly located.

(c) *Format.* Requests may specify the preferred form or format (including electronic formats) for the records the requester seeks. The Commission will accommodate the request if the records are readily reproducible in that form or format.

(d) *Requester information.* Requesters must provide contact information, such as their phone number, email address, and/or mailing address, to assist the agency in communicating with them and providing released records.

■ 4. Amend § 1610.11 by revising paragraphs (c) and (d) to read as follows:

§ 1610.11 Appeals to the legal counsel from initial denials.

* * * * *

(c) *Decisions on appeals.* The Commission must provide its decision on an appeal in writing. A decision that

upholds the Commission's determination in whole or in part must contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision must provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the dispute resolution services offered by the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation. If the Commission's decision is remanded or modified on appeal, the Commission will notify the requester of that determination in writing. The Commission will then further process the request in accordance with that appeal determination and will respond directly to the requester.

(d) *Engaging in dispute resolution services provided by OGIS.* Dispute resolution is a voluntary process. If the Commission agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

* * * * *

■ 5. Revise § 1610.13 to read as follows:

§ 1610.13 Maintenance of files.

The Commission must preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to Title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration. The Commission must not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

[FR Doc. 2017-19897 Filed 9-27-17; 8:45 am]

BILLING CODE 6570-01-P

**DEPARTMENT OF THE TREASURY
Financial Crimes Enforcement Network**

31 CFR Parts 1010 and 1024

[Docket No. Fincen-2014-0001]

RIN 1506-AB25

Customer Due Diligence Requirements for Financial Institutions; Correction

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Correcting amendments.

SUMMARY: FinCEN is making technical corrections to a final rule published in the **Federal Register** on Wednesday, May 11, 2016. The final rule relates to certain customer due diligence standards applicable to covered financial institutions, defined as banks, brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities. As published, the final rule contains technical errors that could cause confusion if not corrected.

DATES: *Effective Date:* These corrections are effective September 28, 2017.

Applicability date: Covered financial institutions must comply with these rules and the rules published in the **Federal Register** on May 11, 2016 (81 FR 29398) by May 11, 2018.

FOR FURTHER INFORMATION CONTACT: FinCEN Resource Center at 1-800-767-2825. E-mail inquiries can be sent to frc@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 11, 2016, FinCEN published a final rule (81 FR 29398) entitled "Customer Due Diligence Requirements for Financial Institutions." The final rule amends the Bank Secrecy Act regulations to include a new requirement for covered financial institutions to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions. The final rule also amends the anti-money laundering (AML) program requirements for all covered institutions. This document makes technical corrections to the Certification Form located in appendix A to 31 CFR 1010.230 and adds a paragraph to 31 CFR 1024.210(b) that was inadvertently omitted in the final rule published in the **Federal Register** with an effective date of July 11, 2016, and an applicability date of May 11, 2018.

II. Description of the Technical Corrections

A. Correction to Appendix A to § 1010.230

This document makes technical corrections to Appendix A (Certification Form) to 31 CFR 1010.230. Appendix A inadvertently omitted the words "Type," after "Name" in the heading of Section II.b.¹ Appendix A also included the term "foreign persons" in lieu of the term "non-U.S. persons" in several places and omitted the term "Social Security number" as described below. Because appendix A was originally

¹ See 81 FR 29398, 29455.

printed in the **Federal Register** from camera-ready copy rather than from typed text, the entire Appendix A, with the corrections, must be reprinted in the **Federal Register** from new camera-ready copy. As revised, appendix A (Certification Form) is identical to the original version except for the following: In the first sentence in Part I under the heading “What information do I have to provide?”, the term “foreign persons” is changed to “non-U.S. persons”; and in Part II: The heading of Section II b. is changed to “b. Name, Type, and Address of Legal Entity for Which the Account is Being Opened.”; and in the headings of the last column in the Tables in Section II c and Section II d, the term “Foreign Persons” is changed to “Non-U.S. Persons” and the term “Social Security Number” is added after the term “persons”; and in footnote 1, the term “Foreign Persons” is changed to “Non-U.S. Persons” and “a Social Security Number.” is inserted after the word “provide”.

B. Correction to § 1024.210

This document also makes a technical correction in 31 CFR 1024.210 by reinserting the training element of the AML program requirements for mutual funds, which was inadvertently omitted from the final rule. Consistent with 31 U.S.C. 5318(h)(1)(C) and the AML program requirements for mutual funds adopted in 2002,² the training element appeared in the proposal amending the AML program requirements for mutual funds to add a new requirement relating to customer due diligence.³ In the final rule, however, the training element was inadvertently omitted from 31 CFR 1024.210(b). The training element is being reinserted by this correction document.

III. Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(3)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief

statement of reasons therefore in the rules issued) that notice and public comment procedure thereon are impracticable, unnecessary, or contrary to the public interest. This correcting document reinserts language inadvertently omitted from the “Customer Due Diligence Requirements for Financial Institutions” final rule, specifically the training element in the AML program rule for mutual funds, and deletes a term and adds language that was inadvertently omitted from the Certification Form which accompanied the final rule. The agency has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment is unnecessary.

Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. FinCEN finds that there is good cause for shortened notice since the revisions made by this final rule are minor, non-substantive, and technical. This final rule takes effect September 28, 2017 with an applicability date of May 11, 2018.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.⁴ As noted previously, FinCEN has determined that it is unnecessary to publish a notice of proposed rulemaking for this final rule. Accordingly, the RFA’s requirements relating to an initial and final regulatory flexibility analysis do not apply.

V. Executive Order 13563 and 12866

FinCEN has determined that Executive Orders 13563 and 12866 do not apply in this final rulemaking.

VI. Paperwork Reduction Act Notices

There are no collection of information requirements in this final rule.

⁴ See 5 U.S.C. 603 and 604.

VII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency must prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that no portion of this final rule will result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, this final rule is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 31 CFR Parts 1010 and 1024

Administrative practice and procedure, Banks, Banking, Brokers, Counter money laundering, Counterterrorism, Currency, Foreign banking, Reporting and recordkeeping requirement, Securities, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, chapter X of title 31 of the Code of Federal Regulations is amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 2. In § 1010.230, revise appendix A to read as follows:

§ 1010.230 Beneficial ownership requirements for legal entity customers.

* * * * *

BILLING CODE 4810–02–P

² 67 FR 21117, 21121 (April 29, 2002).

³ See 31 CFR 1024.210(b)(4) and (5) in the proposed rule published August 4, 2014 (79 FR 45151, 45173).

APPENDIX A to § 1010.230-- CERTIFICATION REGARDING BENEFICIAL OWNERS OF LEGAL ENTITY CUSTOMERS

I. GENERAL INSTRUCTIONS

What is this form?

To help the government fight financial crime, Federal regulation requires certain financial institutions to obtain, verify, and record information about the beneficial owners of legal entity customers. Legal entities can be abused to disguise involvement in terrorist financing, money laundering, tax evasion, corruption, fraud, and other financial crimes. Requiring the disclosure of key individuals who own or control a legal entity (i.e., the beneficial owners) helps law enforcement investigate and prosecute these crimes.

Who has to complete this form?

This form must be completed by the person opening a new account on behalf of a legal entity with any of the following U.S. financial institutions: (i) a bank or credit union; (ii) a broker or dealer in securities; (iii) a mutual fund; (iv) a futures commission merchant; or (v) an introducing broker in commodities.

For the purposes of this form, a **legal entity** includes a corporation, limited liability company, or other entity that is created by a filing of a public document with a Secretary of State or similar office, a general partnership, and any similar business entity formed in the United States or a foreign country. **Legal entity** does not include sole proprietorships, unincorporated associations, or natural persons opening accounts on their own behalf.

What information do I have to provide?

This form requires you to provide the name, address, date of birth and Social Security number (or passport number or other similar information, in the case of Non-U.S. Persons) for the following individuals (*i.e.*, the **beneficial owners**):

- (i) Each individual, if any, who owns, directly or indirectly, 25 percent or more of the equity interests of the legal entity customer (*e.g.*, each natural person that owns 25 percent or more of the shares of a corporation); **and**
- (ii) An individual with significant responsibility for managing the legal entity customer (*e.g.*, a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer).

The number of individuals that satisfy this definition of “beneficial owner” may vary. Under section (i), depending on the factual circumstances, up to four individuals (but as few as zero) may need to be identified. Regardless of the number of individuals identified under section (i), you must provide the identifying information of one individual under section (ii). It is possible that in some circumstances the same individual might be identified under both sections (*e.g.*, the President of Acme, Inc. who also holds a 30% equity interest). Thus, a completed form will contain the identifying information of at least one individual (under section (ii)), and up to five individuals (*i.e.*, one individual under section (ii) and four 25 percent equity holders under section (i)).

The financial institution may also ask to see a copy of a driver’s license or other identifying document for each beneficial owner listed on this form.

II. CERTIFICATION OF BENEFICIAL OWNER(S)

Persons opening an account on behalf of a legal entity must provide the following information:

a. Name and Title of Natural Person Opening Account:

b. Name, Type, and Address of Legal Entity for Which the Account is Being Opened:

c. The following information for each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the legal entity listed above:

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number	For Non-U.S. Persons: Social Security Number, Passport Number and Country of Issuance, or other similar identification number ¹

(If no individual meets this definition, please write “Not Applicable.”)

d. The following information for one individual with significant responsibility for managing the legal entity listed above, such as:

- An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or
- Any other individual who regularly performs similar functions.

(If appropriate, an individual listed under section (c) above may also be listed in this section (d)).

¹ In lieu of a passport number, Non-U.S. Persons may also provide a Social Security Number, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Name/Title	Date of Birth	Address (Residential or Business Street Address)	<i>For U.S. Persons:</i> Social Security Number	<i>For Non-U.S. Persons:</i> Social Security Number, Passport Number and Country of Issuance, or other similar identification number ¹

I, _____ (*name of natural person opening account*), hereby certify, to the best of my knowledge, that the information provided above is complete and correct.

Signature: _____ Date: _____

Legal Entity Identifier _____ (Optional)

PART 1024—RULES FOR MUTUAL FUNDS

■ 3. The authority citation for part 1024 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 4. In § 1024.210:

■ a. Redesignate paragraph (b)(4) as paragraph (b)(5);

■ b. In newly redesignated paragraph (b)(5)(ii), remove the words “paragraph (b)(4)(ii)” and add in their place the words “paragraph (b)(5)(ii)”; and

■ c. Add a new paragraph (b)(4).
The addition reads as follows:

§ 1024.210 Anti-money laundering program requirements for mutual funds.

* * * * *

(b) * * *

(4) Provide ongoing training for appropriate persons; and

* * * * *

Dated: September 14, 2017.

Jamal El-Hindi,
Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2017–20777 Filed 9–27–17; 8:45 am]

BILLING CODE 4810–02–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0215; FRL–9968–34–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Removal of Clean Air Interstate Rule (CAIR) Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia. The submitted revision requests EPA remove from the Virginia SIP regulations from the Virginia Administrative Code that established EPA-administered trading programs under the Clean Air Interstate Rule (CAIR), one of which also included requirements to address nitrogen oxide (NO_x) reductions required under the NO_x SIP Call. The EPA-administered trading programs under CAIR were discontinued on December 31, 2014 upon the implementation of the Cross-State Air Pollution Rule (CSAPR), which was promulgated by EPA to

replace CAIR. CSAPR established federal implementation plans (FIPs) for 23 states, including Virginia. The SIP submittal seeks removal from the Virginia SIP of Virginia regulations that implemented the CAIR annual NO_x, ozone season NO_x, and sulfur dioxide (SO₂) trading programs (as CSAPR has replaced CAIR). EPA is approving the SIP revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on November 27, 2017 without further notice, unless EPA receives adverse written comment by October 30, 2017. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0215 at <https://www.regulations.gov>, or via email to stahl.cynthia@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.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: Sara Calcinore, (215) 814-2043, or by email at calcinore.sara@epa.gov.

SUPPLEMENTARY INFORMATION: On January 5, 2017, the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VADEQ), submitted a SIP revision (Revision D16) that requests removal from its SIP of Virginia Administrative Code regulations including 9 VAC 5 Chapter 140: Part II—NO_x Annual Trading Program; Part III—NO_x Ozone Season Trading Program; and Part IV—SO₂ Annual Trading Program (Sections 5-140-1010 through 5-140-3880).

I. Background

EPA promulgated CAIR (70 FR 25162, May 12, 2005) to address transported emissions that significantly contributed to downwind states' nonattainment and maintenance of the 1997 ozone and fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). CAIR required 28 states, including Virginia, to reduce emissions of NO_x and SO₂, precursors to the formation of ambient ozone and PM_{2.5}. Under CAIR, EPA established federal implementation plans (FIPs) comprised of separate cap and trade programs for annual NO_x, ozone season NO_x, and annual SO₂. States could comply with the requirements of CAIR by remaining on the FIP, which applied only to electric generating units (EGUs), or by submitting a CAIR SIP revision that included as trading sources EGUs and certain non-EGUs¹ that formerly traded in the NO_x Budget Trading Program

¹ These non-EGUs are defined in the NO_x SIP Call as stationary, fossil fuel-fired boilers, combustion turbines, or combined cycle systems with a maximum design heat input greater than 250 million British thermal units per hour (MMBtu/hr).

under the NO_x SIP Call.² On December 28, 2007 (72 FR 73602), EPA approved a SIP revision submitted by Virginia that allowed the Commonwealth to participate in the EPA-administered CAIR regional cap and trade programs for NO_x annual, NO_x ozone season, and SO₂ annual emissions. Virginia's NO_x ozone season trading program under CAIR included non-EGUs that were previously trading in the NO_x budget trading program under the NO_x SIP Call, which satisfied Virginia's obligations under the NO_x SIP Call.

After EPA promulgated CAIR, litigation ensued. The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008,³ but ultimately remanded the rule to EPA without *vacatur* to preserve the environmental benefits provided by CAIR.⁴ The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the D.C. Circuit's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued as planned with the NO_x annual and ozone season programs beginning in 2009 and the SO₂ annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 PM_{2.5} NAAQS. The rule also contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of CSAPR compliance requirements. CSAPR was to become effective January 1, 2012; however, the timing of CSAPR's implementation was impacted by a number of court actions.

Numerous parties filed petitions for review of CSAPR in the D.C. Circuit, and on December 30, 2011, the D.C. Circuit stayed CSAPR prior to its implementation and ordered EPA to continue administering CAIR on an interim basis.⁵ On August 21, 2012, the D.C. Circuit issued its ruling, vacating and remanding CSAPR to EPA and ordering continued implementation of

² In October 1998, EPA finalized the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone"—commonly called the NO_x SIP Call. See 63 FR 57356 (October 27, 1998).

³ *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008).

⁴ *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008).

⁵ Order of Dec. 30, 2011, in *EME Homer City Generation, L.P. v. EPA*, D.C. Cir. No. 11-1302.

CAIR. *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit's *vacatur* of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the Supreme Court's ruling. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects.

Throughout the initial round of D.C. Circuit proceedings and the ensuing Supreme Court proceedings, the stay on CSAPR remained in place, and EPA continued to implement CAIR. Following the April 2014 Supreme Court decision, EPA filed a motion asking the D.C. Circuit to lift the stay in order to allow CSAPR to replace CAIR in an equitable and orderly manner while further D.C. Circuit proceedings were held to resolve remaining claims from petitioners. Additionally, EPA's motion requested to toll, by three years, all CSAPR compliance deadlines that had not passed as of the approval date of the stay. On October 23, 2014, the D.C. Circuit granted EPA's request,⁶ and on December 3, 2014 (79 FR 71663), in an interim final rule, EPA set the updated effective date of CSAPR as January 1, 2015 and tolled the implementation of CSAPR Phase I to 2015 and CSAPR Phase 2 to 2017. In accordance with the interim final rule, the sunset date for CAIR was December 31, 2014, and EPA began implementing CSAPR on January 1, 2015.

Starting in January 2015, the CSAPR FIP trading programs for annual NO_x, ozone season NO_x, and annual SO₂ were applicable in Virginia. Thus, since January 1, 2015, Virginia regulations implementing the CAIR annual trading programs, including the NO_x ozone season trading program addressing Virginia's obligations under the NO_x SIP Call, have been obsolete and moot and none of these programs contribute to emission reductions in Virginia.

On October 26, 2016 (81 FR 74504), EPA finalized the CSAPR Update Rule to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS, and issued FIPs that updated the ozone season NO_x budgets for 22 states, including Virginia. Starting in January 2017, the CSAPR Update budgets were implemented via modifications to the CSAPR NO_x ozone season allowance trading program that was established under the original CSAPR.

⁶ Order Document #1518738, *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Issued Oct. 23, 2014).

II. Summary of SIP Revision and EPA Analysis

VADEQ submitted a SIP revision on January 5, 2017 requesting the removal of regulations from the Virginia SIP under 9 VAC 5 Chapter 140: Part II—NO_x Annual Trading Program, Part III—NO_x Ozone Season Trading Program, and Part IV—SO₂ Annual Trading Program (Sections 5–140–1010 through 5–140–3880), which implemented the CAIR annual NO_x, ozone season NO_x, and annual SO₂ trading programs. These regulations have been moot since January 1, 2015, when CSAPR replaced CAIR, and have been repealed in their entirety from the Virginia Administrative Code. The amendments removing these regulations were adopted by the State Air Pollution Control Board on September 9, 2016 and were effective as of November 16, 2016.

As noted previously, on January 1, 2015, the CAIR annual NO_x, ozone season NO_x, and annual SO₂ trading programs were replaced by the trading programs under the CSAPR FIP. Therefore, regulations in the Virginia SIP that implemented the CAIR annual trading programs have been obsolete and moot since January 1, 2015. None of the provisions in 9 VAC 5 Chapter 140 which Virginia seeks to remove from the SIP presently reduce NO_x or SO₂ emissions from EGUs or certain non-EGUs after December 31, 2014 as CAIR was replaced by CSAPR.

These obsolete regulations include provisions under 9 VAC 5 Chapter 140: Part III—NO_x Ozone Season Trading Program Article 1—CAIR NO_x Ozone Season Trading Program General Provisions and Article 5—CAIR NO_x Ozone Season Allowance Allocations, which addressed Virginia's obligations under the NO_x SIP Call by including EGUs and certain large non-EGUs that had formerly traded under the NO_x SIP Call trading program as CAIR trading sources. Unlike the CAIR trading program, CSAPR's trading program for ozone season NO_x as promulgated in 2011 does not provide for non-EGUs to participate in trading. Therefore, since January 1, 2015, when CSAPR replaced CAIR and the CSAPR FIP became effective in Virginia, the Virginia SIP has not contained an effective regulation addressing Virginia's obligation under the NO_x SIP Call to reduce NO_x emissions from non-EGUs such as stationary, fossil fuel-fired boilers, combustion turbines, or combined cycle systems with a maximum design heat input greater than 250 MMBtu/hr. The absence of an effective regulation in the Virginia SIP to reduce NO_x emissions from these non-EGUs that formerly

participated in the CAIR trading program resulted from the sunset of CAIR and EPA's implementation of CSAPR starting January 1, 2015. Because CSAPR did not provide for trading by non-EGUs, Virginia's SIP no longer meets the Virginia NO_x SIP Call obligation with respect to these non-EGUs that formerly traded in CAIR. However, Virginia's request in its January 5, 2017 SIP seeking removal from its SIP of 9 VAC 5 Chapter 140: Part III—NO_x Ozone Season Trading Program and EPA's action to approve the January 5, 2017 submittal did not create this gap in coverage under the Virginia SIP. According to Virginia, the Commonwealth is in the process of drafting a regulation to address the Commonwealth's obligations under the NO_x SIP Call (including its obligation to address these non-EGUs which formerly traded in CAIR). In remediating its provisions to address the NO_x SIP Call, Virginia must satisfy the requirements of 40 CFR 51.121(f) which lists requirements such as control measures to be included in SIP revisions to meet NO_x budgets assigned under the NO_x SIP Call. EPA expects Virginia will submit such provisions to EPA to be included in Virginia's SIP, and EPA will review and act on any such SIP submittal from Virginia addressing the Commonwealth's NO_x SIP Call obligations in a separate rulemaking.

Since the regulations implementing the CAIR annual NO_x, ozone season NO_x, and annual SO₂ trading programs have been moot and non-operational since CAIR was replaced by CSAPR on January 1, 2015, removing these regulations from the Virginia SIP will not interfere with reduction of NO_x or SO₂ emissions in Virginia and will not interfere with Virginia's attainment of any NAAQS, reasonable further progress, or any other applicable CAA requirement. In addition, as Virginia's SIP has not effectively addressed non-EGUs that formerly traded in CAIR for NO_x SIP Call obligations since CAIR sunset, removing 9 VAC 5 Chapter 140: Part III—NO_x Ozone Season Trading Program from the Virginia SIP will also not interfere with attainment of NAAQS, reasonable further progress, or any CAA requirement as the CAIR's sunset removed the non-EGUs from the ozone season NO_x trading program. Thus, EPA finds the January 5, 2017 SIP revision approvable in accordance with section 110 of the CAA, including specifically with section 110(l) of the CAA.

III. Final Action

EPA is approving the January 5, 2017 SIP revision submission from the

Commonwealth of Virginia, which sought removal from the Virginia SIP of moot regulations under 9 VAC 5 Chapter 140 that implemented the CAIR annual NO_x, ozone season NO_x, and annual SO₂ trading programs at Part II—NO_x Annual Trading Program; Part III—NO_x Ozone Season Trading Program; and Part IV—SO₂ Annual Trading Program (Sections 5–140–1010 through 5–140–3880). EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on *November 27, 2017* without further notice unless EPA receives adverse comment by *October 30, 2017*. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the

content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code § 10.1–1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts” The opinion concludes that “[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.” Virginia’s Immunity law, Va. Code Sec. 10.1–1199, provides that “[t]o the extent consistent with requirements imposed by federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211

or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action removing from the Virginia SIP regulations under Sections 5–140–1010 through 5–140–3880 of 9 VAC 5 Chapter 140 that implemented the CAIR annual NO_x, ozone season NO_x, and annual SO₂ trading programs may not be challenged later in

proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 8, 2017.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart VV—Virginia

§ 52.2420 [Amended]

■ 2. In § 52.2420, the table in paragraph (c) is amended by:

■ a. Removing the section entitled “Part II NO_x Annual Trading Program”, including “Article 1” through “Article 9” including entries “5–140–1010” through “5–140–1880”;

■ b. Removing the section entitled “Part III NO_x Ozone Season Trading Program”, including “Article 1” through “Article 9” including entries “5–140–2010” through “5–140–2880”; and;

■ c. Removing the section entitled “Part IV SO₂ Annual Trading Program”, including “Article 1” through “Article 9” including entries “5–140–3010” through “5–140–3880”.

[FR Doc. 2017–20724 Filed 9–27–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0411; FRL–9968–38–Region 9]

Approval and Promulgation of Implementation Plans; Enhanced Monitoring; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision submitted by the State of California on November 10, 1993. This

SIP revision concerns the establishment of a Photochemical Assessment Monitoring System (PAMS) network in six ozone nonattainment areas within California. The EPA is taking this action under the Clean Air Act based on the conclusion that all applicable statutory and regulatory requirements related to PAMS SIP revisions have been met.

DATES: This rule is effective October 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R09–OAR–2017–0411. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed on the Web site, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <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: Doris Lo, EPA Region IX, (415) 972–3959, lo.doris@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,” and “our” refer to the EPA.

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- II. Public Comments
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I. Proposed Action

On August 2, 2017 (82 FR 35922), we proposed to approve a SIP revision submitted by the State of California on November 10, 1993. Herein, we refer to our proposed action on August 2, 2017, as the “proposed rule.”

In our proposed rule, we provided a discussion of the regulatory context leading to the SIP revision submitted by California on November 10, 1993. In short, the Clean Air Act (CAA or “Act”), as amended in 1990, required the EPA to designate as nonattainment, and to classify as Marginal, Moderate, Serious, Severe or Extreme, any ozone areas that were still designated nonattainment under the 1977 Act Amendments, and any other areas violating the 1-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period.¹ Within

¹ See section 107(d)(4) of the Act. See also 56 FR 56694, November 6, 1991.

California, we classified six ozone nonattainment areas as Serious, Severe, or Extreme: Los Angeles-South Coast Air Basin (“South Coast”), Sacramento Metro, San Diego County, San Joaquin Valley, Southeast Desert Modified Air Quality Management Area (“Southeast Desert”) and Ventura County.² Such areas were subject to many requirements, including those related to enhanced monitoring in CAA section 182(c)(1).

CAA section 182(c)(1) of the CAA required the EPA to promulgate rules for enhanced monitoring of ozone, oxides of nitrogen, and volatile organic compounds to obtain more comprehensive and representative data on ozone air pollution in areas designated nonattainment and classified as Serious, Severe or Extreme. The EPA’s final PAMS regulation was promulgated on February 12, 1993 (58 FR 8452). Section 182(c)(1) also required states to submit SIP revisions providing for enhanced monitoring for such areas consistent with the PAMS regulation.

On November 10, 1993, the California Air Resources Board (CARB) submitted to the EPA a SIP revision for PAMS networks in California (“California PAMS SIP revision”). The California PAMS SIP revision consists of PAMS commitments from five California air districts with jurisdiction within the six relevant ozone nonattainment areas: The South Coast Air Quality Management District (AQMD) (for South Coast and Southeast Desert areas); Sacramento Metro AQMD (for the Sacramento Metro area); San Diego County Air Pollution Control District (APCD) (for the San Diego County area); San Joaquin Valley Unified APCD (for the San Joaquin Valley area), and Ventura County APCD (for the Ventura County area), as well as CARB Executive Orders approving the commitments, and public process documentation. The California PAMS SIP revision is intended to meet the requirements of section 182(c)(1) of the Act and to comply with the PAMS regulation, codified at 40 CFR part 58, as promulgated on February 12, 1993.

In our proposed rule, we identified the criteria we used to review the California PAMS SIP revision submittal and provided our evaluation and rationale for proposed approval. We determined that California’s PAMS SIP revision meets all applicable requirements: (1) By first committing to, and then by implementing, PAMS networks as required in 40 CFR part 58; and (2) by providing the public with an opportunity to inspect the proposed

² See 56 FR 56694, November 6, 1991.

network description during the public review process for the proposed SIP revision prior to forwarding the adopted version to CARB for approval and submittal to the EPA as a revision to the California SIP. As such, in our proposed rule, we proposed to approve the California PAMS SIP revision submitted by CARB on November 10, 1993, as part of the California SIP.

Please see our proposed rule for additional background information and a more detailed evaluation of the SIP revision and explanation of our basis for approval.

II. Public Comments

The EPA’s proposed action on August 2, 2017, provided a 30-day public comment period ending on September 1, 2017. We received no comments on our proposed action.

III. Final Action

Under CAA section 110(k)(3) and for the reasons set forth in our proposed rule and summarized above, the EPA is taking final action to approve the California PAMS SIP revision submitted on November 10, 1993, for the following six ozone nonattainment areas in California: South Coast, Sacramento Metro, San Diego County, San Joaquin Valley, Southeast Desert, and Ventura County. We are taking this final action based on our conclusion that the California PAMS SIP revision meets all applicable requirements for enhanced ambient pollutant concentration monitoring under CAA section 182(c)(1) and our PAMS regulation.

IV. Statutory and Executive Order Reviews

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

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

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
 - does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
 - does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).
- Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of

this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: September 15, 2017.

Deborah Jordan,

Acting Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

- 2. Section 52.220 is amended by adding paragraph (c)(495) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(495) The following plan was submitted on November 10, 1993 by the Governor’s designee.

(i) [Reserved]

(ii) Additional material.

(A) California Air Resources Board.

(1) Letter and attachments from James D. Boyd, Executive Officer, California Air Resources Board, to Felicia Marcus, Regional Administrator, EPA Region IX, November 10, 1993.

* * * * *

[FR Doc. 2017–20722 Filed 9–27–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2012-0522; FRL-9968-01-OAR]

RIN 2060-AT14

Phosphoric Acid Manufacturing and Phosphate Fertilizer Production Risk and Technology Review Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notification of final action on reconsideration.

SUMMARY: This action finalizes amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories. These final amendments are in response to two petitions for reconsideration filed by industry stakeholders on the rule revisions to the NESHAP for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories that were promulgated on August 19, 2015. We are revising the compliance date by which affected sources must include emissions from oxidation reactors when determining compliance with the total fluoride emission limits for superphosphoric acid (SPA) process lines. In addition, we are revising the compliance date for the monitoring requirements for low-energy absorbers. We are also clarifying one option and adding a new option, to the monitoring requirements for low-energy absorbers.

DATES: This final rule is effective on September 28, 2017.

ADDRESSES: The Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA-HQ-OAR-2012-0522. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov> or in hard copy at the EPA Docket Center (EPA/DC), EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open

from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Fairchild, Sector Policies and Programs Division (Mail Code D243-02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5167; email address: fairchild.susan@epa.gov.

SUPPLEMENTARY INFORMATION: Acronyms and Abbreviations. A number of acronyms and abbreviations are used in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined:

- AMP Alternative monitoring plan
- CAA Clean Air Act
- CBI Confidential business information
- CFR Code of Federal Regulations
- EPA U.S. Environmental Protection Agency
- FR Federal Register
- MACT Maximum achievable control technology
- NAICS North American Industry Classification System
- NESHAP National emission standards for hazardous air pollutants
- OMB Office of Management and Budget
- PRA Paperwork Reduction Act
- RTR Risk and technology review
- SPA Superphosphoric acid
- TAC Total annualized cost
- TCI Total capital investment
- TF Total fluoride
- TFI The Fertilizer Institute
- tpy Tons per year
- UMRA Unfunded Mandates Reform Act

Organization of this Document. The following outline is provided to aid in locating information in this preamble.

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- K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Categories and entities potentially affected by this reconsideration action include those listed in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS ¹ code
Phosphoric Acid Manufacturing Phosphate Fertilizer Production	325312

¹ North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final action. To determine whether your facility would be affected by this final action, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this final action, please contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. How do I obtain a copy of this document and other related information?

The docket number for this final action regarding the NESHAP for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories is Docket ID No. EPA-HQ-OAR-2012-0522.

In addition to being available in the docket, an electronic copy of this document will also be available on the Internet. Following signature by the EPA Administrator, the EPA will post a

copy of this final action at <https://www.epa.gov/stationary-sources-air-pollution/phosphate-fertilizer-production-plants-and-phosphoric-acid>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents on this same Web site.

C. Judicial Review

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by November 27, 2017. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Background Information

On June 10, 1999 (64 FR 31358), the EPA promulgated 40 CFR part 63, subpart AA for the Phosphoric Acid Manufacturing source category and 40 CFR part 63, subpart BB for the Phosphate Fertilizer Production source category. On August 19, 2015 (80 FR 50386), the EPA published amended rules for both source categories that took into consideration the technology review and residual risk review required by sections 112(d)(6) and 112(f) of the CAA, respectively. Following promulgation of the August 2015 rule revisions, the EPA received two petitions for reconsideration from The Fertilizer Institute (TFI) and the Phosphate Corporation of Saskatchewan, including: PCS Phosphate Company, Inc.; White Springs Agricultural Chemical, Inc., DBA PCS Phosphate-White Springs; and PCS Nitrogen Fertilizer, L.P., (collectively "PCS"), requesting administrative reconsideration of amended 40 CFR part 63, subpart AA and subpart BB under CAA section 307(d)(7)(B).

In response to the petitions, the EPA reconsidered and requested comment on three distinct issues:

- Compliance deadline for air oxidation reactors used in SPA lines;
- Compliance deadlines for low-energy absorber monitoring provisions; and
- Monitoring options for low-energy absorbers.

The EPA proposed a notice of reconsideration including proposed rule

amendments in the **Federal Register** on December 9, 2016 (81 FR 89026). We received public comments from two parties. Copies of all comments submitted are available at the EPA Docket Center Public Reading Room. Comments are also available electronically through <http://www.regulations.gov> by searching Docket ID No. EPA-HQ-OAR-2012-0522.

In this document, the EPA is taking final action with respect to the reconsideration and proposed amendments. Section III of this preamble summarizes the public comments received on the proposed notice of reconsideration, presents the EPA's responses to the comments, and explains our rationale for the rule revisions published here.

We are also restoring a provision of the 1999 maximum achievable control technology (MACT) rules that was inadvertently omitted from the risk and technology review (RTR) amendments to those rules. That provision, related to compliance monitoring, allowed sources a ± 20 -percent variability in the minimum liquid flow rate to the absorber.

III. Summary of Final Action on Issues Reconsidered

The three reconsideration issues for which amendments are being finalized in this rulemaking are: (1) Compliance deadlines for air oxidation reactors used in SPA lines; (2) compliance deadlines for revised low-energy absorber monitoring provisions; and (3) monitoring options for low-energy absorbers. A fourth issue, which was identified after the close of the public comment period, is also being addressed in this action. This is the restoration of the ± 20 -percent variability allowance for the minimum liquid flow rate to the absorber. Each of these issues is discussed in detail in the following sections of this preamble.

A. Compliance Deadline for Air Oxidation Reactors Used in SPA Lines

In the August 19, 2015, amendments to 40 CFR part 63, subpart AA, the EPA revised the SPA process line definition to include oxidation reactors. The EPA received petitions requesting the compliance schedule be changed to allow more time for affected sources to include emissions from oxidation reactors when determining compliance with the total fluoride (TF) emission limits for SPA process lines. In response to the petitions, on December 9, 2016, we proposed to revise the compliance date from August 19, 2016, to August 19, 2018. We did not receive adverse

comments on this change. Instead, both commenters stated that they supported this change. Therefore, in this action, the EPA is finalizing the compliance date revision as proposed. The compliance date by which affected sources must include emissions from oxidation reactors when determining compliance with the TF emission limits for SPA process lines is August 19, 2018.¹

B. Compliance Deadlines for Revised Low-Energy Absorber Monitoring Provisions

In the August 19, 2015, amendments to 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB, the EPA changed the compliance monitoring requirement for low-energy absorbers (*i.e.*, absorbers that are designed to operate with pressure drops of 5 inches of water column or less) to require monitoring of liquid-to-gas ratio in lieu of monitoring influent liquid flow and pressure drop through the absorber. The EPA received petitions requesting the compliance schedule be changed to allow more time for affected sources to comply with these monitoring requirements. In response to the petitions, on December 9, 2016, we proposed to revise the compliance dates from August 19, 2016, to August 19, 2017, to allow owners and operators additional time to obtain and certify the instruments needed to monitor liquid-to-gas ratio. However, in this action, the EPA is revising the compliance dates to no later than August 19, 2018, for existing sources as well as for those sources that commenced construction or reconstruction after December 27, 1996, and on or before August 19, 2015. We are also clarifying that new sources that commence construction or reconstruction after August 19, 2015, must comply with the monitoring requirements for absorbers immediately upon startup.

Both commenters said that the proposed compliance date (*i.e.*, August 19, 2017) for monitoring liquid-to-gas ratio on low-energy absorbers only allows approximately seven months to achieve compliance from the date public comments were due (*i.e.*, January 23, 2017). These commenters asserted that a duration of 7 months may not be sufficient to acquire, engineer, test, and install the requisite technologies. One of the commenters specified that 7 months is not enough time to complete and begin implementing gas flow monitoring plans for at least 20 of their low-energy absorbers. Additionally, the commenter

¹ Refer to finalized footnotes "c" of Table 1 and Table 2 to subpart AA of 40 CFR part 63.

asserted that for at least some of their low-energy absorbers, gas flow meters are likely not feasible due to the saturated (and sometimes supersaturated) conditions of the gas streams that these absorbers handle; therefore, the commenter contended they need more time to assess liquid-to-gas ratio monitoring options and to establish operating limits. The commenter stated that each liquid-to-gas ratio monitoring option requires complicated, time-consuming, and absorber-specific evaluations. For example, to develop regression models, new instrumentation to monitor fan suction pressure and blower amperage must be installed for some absorbers, and facilities need to make changes to their computer programs. Moreover, the commenter stated that once a regression model is developed, they need additional time to establish the liquid-to-gas ratio operating limit by conducting a performance test. This commenter also maintained that for some of their low-energy absorbers they may need to use an Alternative Monitoring Plan (AMP) to comply with the liquid-to-gas ratio monitoring requirements and 7 months may not be enough time to get approval for the AMP. The commenter cited a specific example where the EPA Region is in the tenth month of reviewing one of the company's AMP requests. Additionally, one commenter suggested that the EPA revise the "existing source" definition in 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB to extend the compliance date (for the liquid-to-gas ratio monitoring requirements for low-energy absorbers) to those new sources that were in operation on the date the technology review and residual risk review were proposed.

Based on these comments, we agree that more time beyond what we proposed is needed to achieve compliance with the liquid-to-gas ratio monitoring requirements for low-energy absorbers. To allow time to evaluate all monitoring options, obtain and certify instruments, establish operating limits, and, in certain cases, develop a regression model or AMP, the EPA is finalizing a compliance date that is no later than August 19, 2018.² This extension provides a total of 3 years from promulgation (of the August 19, 2015, amendments to 40 CFR part 63, subparts AA and BB) for sources to comply with the rule, and is the maximum compliance period allowed by the CAA. We also agree with the

commenter that the compliance date should apply to certain new sources. This was an error in the December 9, 2016, proposal as we did not intend for the compliance date to apply to only existing sources. Therefore, in this action, the EPA is correcting this error at footnote b for Table 3 to subpart AA of 40 CFR part 63 and footnote b for Table 3 to subpart BB of 40 CFR part 63 such that the compliance date for the liquid-to-gas ratio monitoring requirements for low-energy absorbers applies to both existing sources and those new sources that commenced construction or reconstruction after December 27, 1996, and on or before August 19, 2015. We are also clarifying that new sources that commence construction or reconstruction after August 19, 2015, must comply with the monitoring requirements for absorbers immediately upon startup. Instead of revising the "existing source" definition as requested by the commenter, we determined it will be clearer and more straightforward to make the corrections in these footnotes.

Furthermore, one commenter requested that the EPA add more compliance options for low-energy absorbers in advance of the compliance date for the liquid-to-gas ratio monitoring requirements. The commenter asserted that footnote b for Table 3 to subpart AA of 40 CFR part 63 and footnote b for Table 3 to subpart BB of 40 CFR part 63 are too narrowly drafted because they do not allow facilities to use liquid-to-gas ratio monitoring or their current monitoring strategies, such as monitoring in accordance with an already approved AMP or an applicable monitoring provision of a permit issued under 40 CFR part 70, in advance of the compliance date. This commenter suggested edits to footnote b for Table 3 to subpart AA of 40 CFR part 63 and footnote b for Table 3 to subpart BB of 40 CFR part 63 (see docket item EPA-HQ-OAR-2012-0522-0097) to allow compliance with any one of the following: (i) The monitoring requirements in Table 3 for absorbers designed and operated with pressure drops of 5 inches of water column or less; (ii) the applicable monitoring provisions of a permit issued under 40 CFR part 70 or an Alternative Monitoring Plan approved pursuant to 40 CFR 63.8(f); or (iii) the installation of continuous parameter monitoring systems (CPMS) for pressure at the gas stream inlet or outlet of the absorber, and monitoring pressure drop through the absorber. We agree with the commenter that facilities should be

allowed to use liquid-to-gas ratio monitoring or their current approved monitoring strategy (in lieu of monitoring pressure drop through the absorber), in advance of the compliance date for the liquid-to-gas ratio monitoring requirements for low-energy absorbers. Therefore, for the most part, we included the commenter's edits to footnote b for Table 3 to subpart AA of 40 CFR part 63 and footnote b for Table 3 to subpart BB of 40 CFR part 63 in the final rules. However, we added language to the commenter's edits to ensure that if an owner or operator were to use a part 70 monitoring provision, it would be a federally enforceable provision. We also split the option to use a part 70 monitoring provision and the option to use an AMP such that it is one or the other. The final rule allows an owner or operator to use liquid-to-gas ratio monitoring or their current approved monitoring strategy (in lieu of monitoring pressure drop through the absorber), in advance of the compliance date for the liquid-to-gas ratio monitoring requirements for low-energy absorbers.

Finally, one commenter requested that the EPA include language in the final rules to authorize compliance with an AMP that is still under review by an EPA Regional office beyond the compliance date for the liquid-to-gas ratio monitoring requirements, provided the AMP request was submitted to the Region more than 30 days in advance of the compliance deadline. The commenter maintained that without this type of category-specific provision, owners or operators are not entitled (based on the existing provision at 40 CFR 63.8(f)(1)) to rely on AMPs in advance of the EPA's approval. The commenter stated that although 40 CFR 63.8(f)(5)(i) calls for the Agency to respond to AMP requests within 30 days of receipt, the EPA sometimes needs more than 30 days to grant or deny such requests. The commenter asserted they are unable to predict or control the response time of the EPA; therefore, they should not be required to carry the risk and uncertainty of relying on an AMP that is still under EPA review after the compliance deadline. The commenter also stated that facility-specific extensions may not be available under CAA section 112(i)(3)(B), which authorizes a 1-year extension if "necessary for the installation of controls." The commenter contended that liquid-to-gas monitoring may require new equipment for some low-energy absorbers, but the new equipment will likely be for absorber

² Refer to finalized footnote b of Table 3 to subpart AA of 40 CFR part 63 and Table 3 to subpart BB of 40 CFR part 63.

monitoring and not control of pollutants.

We disagree with the commenter's request to authorize compliance with AMPs that are still under the EPA review beyond the compliance date for the liquid-to-gas ratio monitoring requirements. As stated previously, we are revising and finalizing the compliance date for the liquid-to-gas ratio monitoring requirements for low-energy absorbers to no later than August 19, 2018, which is 3 years from promulgation of the final rule, and is the maximum allowed under the CAA for phosphoric acid and phosphate fertilizer manufacturers to comply with the rule. We believe this is an ample amount of time for any outstanding AMPs to be approved. Furthermore, the existing provision at 40 CFR 63.8(f)(1) has been in place for more than 20 years. During this time, the process for review and resolution of AMP requests has functioned satisfactorily within the established timelines. The concern raised by the commenter involves one unique case currently under consideration. We concluded that adopting a blanket exemption from the procedures of 40 CFR 63.8(f) for all owners or operators of the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories is inappropriate. This one unique case is more appropriately handled by the EPA Regional office continuing to review the technical merits of the AMP application and applying enforcement discretion to ensure equitable treatment of the company.

C. Monitoring Options for Low-Energy Absorbers

In response to the petitions the EPA received regarding monitoring requirements for low-energy absorbers, we proposed to clarify an existing monitoring option (*i.e.*, the blower design capacity option) and to add a new option (*i.e.*, the regression model option) to 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB. We also proposed language reminding affected entities that they can request an alternative monitoring method under the provisions of 40 CFR 63.8(f) on a site-specific basis. Refer to the preamble to the proposed rule (81 FR 89026) for more details on each of these changes.

With exception of the items discussed in the following paragraphs, commenters stated that they supported these changes. Therefore, unless discussed below, we are finalizing the changes regarding monitoring requirements for low-energy absorbers as proposed.

Blower Design Capacity Option

In response to petitioner requests for clarification of the regulatory language describing the blower design capacity option for determining the gas flow rate through the absorber (for use in monitoring the liquid-to-gas ratio), we clarified in the preamble to the proposed rulemaking how this option can be used. Additionally, we proposed changing the term "design blower capacity" in Table 3 to subpart AA of 40 CFR part 63 and Table 3 to subpart BB of 40 CFR part 63 to "blower design capacity" and made other minor text edits to these tables in order to use the phrase "gas flow rate through the absorber" more consistently. We also proposed footnote c for Table 3 to subpart AA of 40 CFR part 63 and footnote c for Table 3 to subpart BB of 40 CFR part 63 to add certain site-specific monitoring plan requirements, clarify that the blower design capacity option is intended to establish the maximum possible gas flow through the absorber, and explain that the blower design capacity option can be used regardless of whether the blower is located on the influent or effluent side of the absorber. Finally, we proposed a requirement at 40 CFR 63.608(e) and 40 CFR 63.628(e) to document, in the site-specific monitoring plan, the calculations that were used to make adjustments for pressure drop if blower design capacity is used to establish the maximum possible gas flow rate through an absorber. In this action, the EPA is finalizing, with one exception, all the proposed language regarding the blower design capacity option.

The one change to the proposed language for the blower design capacity option is our addition of language in footnote c to Table 3 to subpart AA of 40 CFR part 63 and Table 3 to subpart BB of 40 CFR part 63 to clarify that owners and operators must establish the minimum liquid-to-gas ratio operating limit by dividing the minimum liquid flow rate to the absorber determined during a performance test by the maximum possible gas flow rate through the absorber determined using blower design capacity. One commenter requested the EPA include the following additional language to footnote c to Table 3 to subpart AA of 40 CFR part 63 and Table 3 to subpart BB of 40 CFR part 63: "The maximum design gas flow through the scrubber, or Fmax, shall be determined using the blower design capacity and system pressure drop. During performance testing, the observed liquid-to-gas ratio, L/G, will be determined. The minimum liquid flow will be established by multiplying the

compliance L/G by Fmax." We disagree that the language should be added to footnote c as drafted by the commenter because it introduces a new undefined and unnecessary term "Fmax."

We also disagree because much of the commenter's language is already included elsewhere in the rules,³ and while the commenter's suggested third sentence is not addressed elsewhere, it can be rewritten without the use of a new term, "Fmax." Therefore, instead of using the commenter's suggested third sentence, we are including a new sentence in footnote c for Table 3 to subpart AA of 40 CFR part 63 and footnote c for Table 3 to subpart BB of 40 CFR part 63 to read as follows: "Establish the minimum liquid-to-gas ratio operating limit by dividing the minimum liquid flow rate to the absorber (determined during a performance test) by the maximum possible gas flow rate through the absorber (determined using blower design capacity)." We consider this revised sentence as clarifying how each term in the liquid-to-gas ratio is determined and used.

Regression Model Option

In response to the petitions the EPA received requesting other options to be considered for determining the gas flow rate through the absorber, which is used in monitoring the liquid-to-gas ratio, we proposed to include an option in Table 3 to subpart AA of 40 CFR part 63 and in Table 3 to subpart BB of 40 CFR part 63, that allows facilities to develop and use a regression model to determine gas flow rate through an absorber in lieu of direct measurement or using blower design capacity. We also proposed a requirement in footnote a for Table 4 to subpart AA of 40 CFR part 63 and footnote a for Table 4 to subpart BB of 40 CFR part 63 requiring continuous monitoring of blower amperage, blower static pressure, *i.e.*, fan suction pressure, and any other parameters used in the regression model that are not constants. Finally, to allow the flexibility to use best engineering judgment and calculations, we also proposed an annual requirement at 40 CFR 63.608(f) and 40 CFR 63.628(f) to document, in the site-specific monitoring plan, the calculations that were used to develop the regression model and to require that the site-specific monitoring plan be updated annually to maintain accuracy

³ Existing rule language currently in the rules that the commenter suggested is found at Table 3 to subpart AA of 40 CFR part 63; Table 3 to subpart BB of 40 CFR part 63; 40 CFR 63.605(d); at 40 CFR 63.625(d); at Table 4 to subpart AA of 40 CFR part 63 and at Table 4 to subpart BB of 40 CFR part 63.

and reflect data used in the annual regression model verification.

Both commenters stated that they support the use of a regression model to determine gas flow rate through an absorber, but requested one clarification to the proposed language. The commenters requested that the EPA revise footnote d for Table 3 to subpart AA of 40 CFR part 63 and footnote d for Table 3 to subpart BB of 40 CFR part 63 to clarify whether an emissions performance test is necessary when developing and verifying gas flow regression models. The commenters contended that the EPA should allow facilities to develop and verify gas flow regression models separately from the required annual emissions performance test. One commenter maintained that requiring facilities to conduct a performance test to develop a regression model would waste resources and needlessly complicate the schedule for liquid-to-gas ratio monitoring. The commenter contended that facilities would have to conduct more than one performance test in a year's time to first develop a regression model and then set operating limits for liquid-to-gas ratio. The commenters suggested edits to footnote d for Table 3 to subpart AA of 40 CFR part 63 and footnote d for Table 3 to subpart BB of 40 CFR part 63 (see docket items EPA-HQ-OAR-2012-0522-0097 and EPA-HQ-OAR-2012-0522-0098) to make clear that an emissions performance test is not required to develop and verify gas flow regression models. We agree with the commenters' edits to footnote d as it was our intent to allow facilities the flexibility to develop and verify gas flow regression models (using direct measurements of gas flow rate, for example, via EPA Method 2) either separately from, or in conjunction with, the annual performance test. Therefore, in this action, the EPA is finalizing, with one change, all the proposed language regarding the regression model option. The one change we are making

to the proposed language is that we are revising and clarifying footnote d for Table 3 to subpart AA of 40 CFR part 63 and footnote d for Table 3 to subpart BB of 40 CFR part 63 to convey that direct measurements of gas flow rate used to develop or verify regression models may be collected during, or separately from, the annual performance testing that is required in 40 CFR 63.606(b) for subpart AA or 40 CFR 63.626(b) for subpart BB.

D. Restoration of the ±20-Percent Minimum Liquid Flow Rate Variability Allowance

The June 10, 1999, MACT rules (64 FR 31358) included provisions to account for the variability in absorber (*i.e.*, scrubber) pressure drop and the variability in minimum liquid flow rate to the absorber. Specifically, as a compliance monitoring provision of the 1999 MACT rules, owners/operators are required to conduct a performance test to determine the baseline average value for both the pressure drop and for the minimum liquid flow rate of the absorber, and are then allowed to operate within a range that is within 20 percent of this rate.

The August 19, 2015 (80 FR 50386), RTR final rule included the allowance for the ±20-percent variability in the absorber pressure drop, but did not include the allowance for the ±20-percent variability in the minimum liquid flow rate to the absorber.

Industry brought this omission to our attention after the comment period for this reconsideration rule. We subsequently reviewed the record for the August 2015 RTR final rule and could not find any record of a decision to remove the ±20-percent minimum liquid flow rate variability provision. Therefore, we have concluded that this omission was an inadvertent error in the August 2015 RTR final rule, and we are restoring that provision in these final rules. Subpart AA includes this restored provision at 40 CFR 63.605(d)(1)(ii)(A)

and subpart BB includes this restored provision at 40 CFR 63.625(d)(1)(ii)(A).

IV. Impacts Associated With This Final Rule

This action revises compliance dates specific to oxidation reactors in the Phosphoric Acid Manufacturing source category, and absorber monitoring in both the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories. We expect the additional compliance time for oxidation reactors to comply with the rule will have an insignificant effect on a phosphoric acid manufacturing plant's overall emissions.

Specifically, in the reconsideration proposal, the EPA discussed hydrogen fluoride emissions reductions of 0.047 tons per year (tpy) from the oxidation reactor (*i.e.*, a reduction from 0.049 tpy to 0.002 tpy) and TF emissions reductions of 0.14 tpy from the oxidation reactor (*i.e.*, a reduction from 0.147 tpy to 0.007 tpy). The additional 2-year compliance time for oxidation reactors to meet the emission limits in the final rule result in an additional 0.098 tons (196 pounds) of hydrogen fluoride and 0.28 tons (560 pounds) of total fluoride. Hydrogen fluoride emissions from SPA process lines, including oxidation reactors, account for less than 1 percent of all hydrogen fluoride emissions from the source category.

The revisions related to the gas flow calculation that we are finalizing result in capital cost savings of \$88,200 per facility, and capital cost savings of \$1,147,200 industry-wide.⁴ These cost savings are due to our providing alternatives to the requirement to use a gas flow meter for monitoring gas flow at low energy absorbers. In addition to the gas flow meter, we are providing two other monitoring methods as alternative compliance options: (1) A blower design capacity model; and (2) a regression model.

TABLE 2—COST COMPARISON OF DIFFERENT OPTIONS FOR DETERMINING GAS FLOW RATE AT LOW PRESSURE ABSORBERS

Compliance option	Capital costs per facility	Annualized facility costs (2016\$)		Industry Wide Capital Costs ¹	Annualized industry wide costs (2016\$)	
		3%	7%		3%	7%
Blower Design Capacity Model	\$6,400	\$800	\$960	\$83,700	\$10,300	\$12,500
Regression Model	4,200	500	600	54,300	6,700	8,100
Gas Flow Meter	92,400	15,800	18,200	1,201,500	205,900	236,100

¹ Capital costs per facility are rounded values. Industry-wide capital costs are calculated by multiplying the non-rounded values for capital costs per facility by 13 (the total number of facilities in the source category). The resulting product is rounded after calculation.

⁴ For the detailed calculations on these cost savings, refer to "Detailed Costs of Monitoring Gas

Flow Options Worksheet June 2017.xlsx" and "Annualized Cost of Monitoring Options

Worksheet.xlsx" which are available in the docket for this rule.

The costs described in this action are a result of only the final reconsideration notice, and show a cost savings. The costs were calculated at both a 7-percent rate and a 3-percent rate. There is a reduction in estimated annualized costs calculated at both the 7-percent rate and at the 3-percent rate as a result of all 13 affected facilities implementing a lower cost option to monitor the ratio of liquid-to-gas in low energy absorbers, as compared to the cost of that requirement in the rule promulgated in August 2015. We note that the cost savings presented here are not associated with any change in emission limit, do not result in higher hazardous air pollutant emissions, and do not have a negative effect on human health or the environment.

TABLE 3—TOTAL POTENTIAL CAPITAL AND ANNUALIZED SAVINGS FROM MONITORING ALTERNATIVES FOR SUBPARTS AA AND BB [2016\$]

Total capital cost savings	Total annual cost savings (2016\$)
\$1,147,000	\$208,000 (3% discount rate). \$237,000 (7% discount rate).

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-anld-executive-orders>.

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0361. With this action, the EPA is finalizing amendments to 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB that are mainly clarifications to existing rule language to aid in implementation issues raised by stakeholders, or are being made to allow more time for compliance. Therefore, there are no changes to the information collection requirements of the August 19, 2015, final rule, and, consequently, the information collection estimate of

projected costs and hour burden from the final rules have not been revised.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action finalizes amendments to the 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB that are mainly clarifications to existing rule language to aid in implementation issues raised by stakeholders, or are being made to allow more time for compliance.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action finalizes amendments to 40 CFR part 63, subpart AA and 40 CFR part 63, subpart BB that are mainly clarifications to existing rule language to aid in implementation

issues raised by stakeholders, or are being made to allow more time for compliance. We expect the additional compliance time for oxidation reactors will have an insignificant effect on a phosphoric acid manufacturing plant’s overall emissions. Hydrogen fluoride emissions from SPA process lines, including oxidation reactors, account for less than 1 percent of all hydrogen fluoride emissions from the source category. Therefore, the amendments should not appreciably increase risk for any populations.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve new technical standards.

J. 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). The Environmental Justice finding in the August 19, 2015, final rule remains relevant in this action, which finalizes amendments to these rules that are mainly clarifications to existing rule language to aid in implementation issues raised by stakeholders, or are being made to allow more time for compliance. We expect the additional compliance time for oxidation reactors will have an insignificant effect on any phosphoric acid manufacturing plant’s overall emissions. Hydrogen fluoride emissions from SPA process lines, including oxidation reactors, account for less than 1 percent of all hydrogen fluoride emissions from the source category. Therefore, the amendments should not appreciably increase the risk for any populations.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 13, 2017.

E. Scott Pruitt,
Administrator.

For the reasons stated in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

■ 2. Section 63.605(d)(1)(ii)(A) is revised to read as follows:

§ 63.605 Operating and monitoring requirements.

- * * * * *
- (d) * * *
- (1) * * *
- (ii) * * *

(A) The allowable range for the daily averages of the pressure drop across an absorber and of the flow rate of the absorber liquid to each absorber in the process absorbing system, or secondary voltage for a wet electrostatic

precipitator, is ± 20 percent of the baseline average value determined in paragraph (d)(1)(i) of this section. The Administrator retains the right to reduce the ± 20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard. However, the adjustment must not be reduced to less than ± 10 percent under any instance.

* * * * *

■ 3. Section 63.608 is amended by adding paragraphs (e) and (f) to read as follows:

§ 63.608 General requirements and applicability of general provisions of this part.

* * * * *

(e) If you use blower design capacity to determine the gas flow rate through the absorber for use in the liquid-to-gas ratio as specified in Table 3 to this subpart, then you must include in the site-specific monitoring plan specified in paragraph (c) of this section calculations showing how you determined the maximum possible gas flow rate through the absorber based on the blower's specifications (including any adjustments you made for pressure drop).

(f) If you use a regression model to determine the gas flow rate through the absorber for use in the liquid-to-gas ratio as specified in Table 3 to this subpart, then you must include in the site-specific monitoring plan specified in paragraph (c) of this section the calculations that were used to develop the regression model, including the

calculations you use to convert amperage of the blower to brake horsepower. You must describe any constants included in the equations (e.g., efficiency, power factor), and describe how these constants were determined. If you want to change a constant in your calculation, then you must conduct a regression model verification to confirm the new value of the constant. In addition, the site-specific monitoring plan must be updated annually to reflect the data used in the annual regression model verification that is described in Table 3 to this subpart.

Table 1 to Subpart AA of Part 63 [Amended]

■ 4. Table 1 to Subpart AA of Part 63, footnote "c" is amended by removing the text "August 19, 2016," and adding the text "August 19, 2018," in its place.

Table 2 to Subpart AA of Part 63 [Amended]

■ 5. Table 2 to Subpart AA of Part 63, footnote "c" is amended by removing the text "August 19, 2016," and adding the text "August 19, 2018," in its place.

■ 6. Table 3 to subpart AA of part 63 is amended by:

- a. Revising the column headings for "And you must monitor . . ." and "And . . .";
- b. Revising the entry for "Install CPMS for liquid and gas flow at the inlet of the absorber"; and
- c. Adding footnotes "a" through "d" at the end of the table.

The revisions and additions read as follows:

TABLE 3 TO SUBPART AA OF PART 63—MONITORING EQUIPMENT OPERATING PARAMETERS

You must . . .	If . . .	And you must monitor . . . ^a	And . . . ^a
*	*	*	*
Install CPMS for liquid and gas flow at the inlet of the absorber ^b .	Your absorber is designed and operated with pressure drops of 5 inches of water column or less; or. Your absorber is designed and operated with pressure drops of 5 inches of water column or more, and you choose to monitor the liquid-to-gas ratio, rather than only the influent liquid flow, and you want the ability to lower liquid flow with changes in gas flow.	Liquid-to-gas ratio as determined by dividing the influent liquid flow rate by the gas flow rate through the absorber. The units of measure must be consistent with those used to calculate this ratio during the performance test.	You must determine the gas flow rate through the absorber by: Measuring the gas flow rate at the absorber inlet or outlet; Using the blower design capacity, with appropriate adjustments for pressure drop; ^c or Using a regression model. ^d
*	*	*	*

^a To monitor an operating parameter that is not specified in this table (including process-specific techniques not specified in this table to determine gas flow rate through an absorber), you must request, on a site-specific basis, an alternative monitoring method under the provisions of 40 CFR 63.8(f).

^bFor new sources that commence construction or reconstruction after August 19, 2015, the compliance date is immediately upon startup. For existing sources, and new sources that commence construction or reconstruction after December 27, 1996, and on or before August 19, 2015, if your absorber is designed and operated with pressure drops of 5 inches of water column or less, then the compliance date is August 19, 2018. In the interim, for existing sources, and new sources that commence construction or reconstruction after December 27, 1996, and on or before August 19, 2015, with an absorber designed and operated with pressure drops of 5 inches of water column or less, you must comply with one of the following: (i) The monitoring requirements in this Table 3 for absorbers designed and operated with pressure drops of 5 inches of water column or less; (ii) the applicable monitoring provisions included in a permit issued under 40 CFR part 70 to assure compliance with subpart AA; (iii) the applicable monitoring provisions of an Alternative Monitoring Plan approved pursuant to § 63.8(f); or (iv) install CPMS for pressure at the gas stream inlet and outlet of the absorber, and monitor pressure drop through the absorber.

^cIf you select this option, then you must comply with § 63.608(e). The option to use blower design capacity is intended to establish the maximum possible gas flow through the absorber; and is available regardless of the location of the blower (inlet or effluent), as long as the gas flow rate through the absorber can be established. Establish the minimum liquid-to-gas ratio operating limit by dividing the minimum liquid flow rate to the absorber (determined during a performance test) by the maximum possible gas flow rate through the absorber (determined using blower design capacity).

^dIf you select this option, then you must comply with § 63.608(f). The regression model must be developed using direct measurements of gas flow rate, and design fan curves that correlate gas flow rate to static pressure (*i.e.*, fan suction pressure) and brake horsepower of the blower. You must conduct an annual regression model verification using direct measurements of gas flow rate to ensure the correlation remains accurate. Direct measurements of gas flow rate used to develop or verify regression models may be collected during, or separately from, the annual performance testing that is required in § 63.606(b).

■ 7. Table 4 to subpart AA of part 63 is amended by revising the entry for “Influent liquid flow rate and gas stream flow rate” and adding footnote “a” at the end of the table to read as follows:

TABLE 4 TO SUBPART AA OF PART 63—OPERATING PARAMETERS, OPERATING LIMITS AND DATA MONITORING, RECORDKEEPING AND COMPLIANCE FREQUENCIES

For the operating parameter applicable to you, as specified in Table 3	You must establish the following operating limit	And you must monitor, record, and demonstrate continuous compliance using these minimum frequencies		
		Data measurement	Data recording	Data averaging period for compliance
*	*	*	*	*
Influent liquid flow rate and gas stream flow rate.	Minimum influent liquid-to-gas ratio ^a	Continuous	Every 15 minutes ...	Daily.
*	*	*	*	*

^a If you select the regression model option to monitor influent liquid-to-gas ratio as described in Table 3 to this subpart, then you must also continuously monitor (*i.e.*, record every 15 minutes, and use a daily averaging period) blower amperage, blower static pressure (*i.e.*, fan suction pressure), and any other parameters used in the regression model that are not constants.

Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

■ 8. Section 63.625(d)(1)(ii)(A) is revised to read as follows:

§ 63.625 Operating and monitoring requirements.

- * * * * *
- (d) * * *
- (1) * * *
- (ii) * * *

(A) The allowable range for the daily averages of the pressure drop across an absorber and of the flow rate of the absorber liquid to each absorber in the process absorbing system, or secondary voltage for a wet electrostatic precipitator, is ±20 percent of the baseline average value determined in paragraph (d)(1)(i) of this section. The Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source’s level of emissions is near the

value of an applicable emissions standard. However, the adjustment must not be reduced to less than ±10 percent under any instance.

* * * * *

■ 9. Section 63.628 is amended by adding paragraphs (e) and (f) to read as follows:

§ 63.628 General requirements and applicability of general provisions of this part.

* * * * *

(e) If you use blower design capacity to determine the gas flow rate through the absorber for use in the liquid-to-gas ratio as specified in Table 3 to this subpart, then you must include in the site-specific monitoring plan specified in paragraph (c) of this section calculations showing how you determined the maximum possible gas flow rate through the absorber based on the blower’s specifications (including any adjustments you made for pressure drop).

(f) If you use a regression model to determine the gas flow rate through the

absorber for use in the liquid-to-gas ratio as specified in Table 3 to this subpart, then you must include in the site-specific monitoring plan specified in paragraph (c) of this section the calculations that were used to develop the regression model, including the calculations you use to convert amperage of the blower to brake horsepower. You must describe any constants included in the equations (*e.g.*, efficiency, power factor), and describe how these constants were determined. If you want to change a constant in your calculation, then you must conduct a regression model verification to confirm the new value of the constant. In addition, the site-specific monitoring plan must be updated annually to reflect the data used in the annual regression model verification that is described in Table 3 to this subpart.

■ 10. Table 3 to subpart BB of part 63 is amended by:

- a. Revising the column headings for “And you must monitor . . .” and “And . . .”;

■ b. Revising the entry for “Install CPMS for liquid and gas flow at the inlet of the absorber”; and

■ c. Adding footnotes “a” through “d” at the end of the table.

The revisions and additions read as follows:

TABLE 3 TO SUBPART BB OF PART 63—MONITORING EQUIPMENT OPERATING PARAMETERS

You must . . .	If . . .	And you must monitor . . . ^a	And . . . ^a
*	*	*	*
Install CPMS for liquid and gas flow at the inlet of the absorber ^b .	Your absorber is designed and operated with pressure drops of 5 inches of water column or less; or Your absorber is designed and operated with pressure drops of 5 inches of water column or more, and you choose to monitor the liquid-to-gas ratio, rather than only the influent liquid flow, and you want the ability to lower liquid flow with changes in gas flow.	Liquid-to-gas ratio as determined by dividing the influent liquid flow rate by the gas flow rate through the absorber. The units of measure must be consistent with those used to calculate this ratio during the performance test.	You must determine the gas flow rate through the absorber by: Measuring the gas flow rate at the absorber inlet or outlet; Using the blower design capacity, with appropriate adjustments for pressure drop; ^c or Using a regression model. ^d
*	*	*	*

^aTo monitor an operating parameter that is not specified in this table (including process-specific techniques not specified in this table to determine gas flow rate through an absorber), you must request, on a site-specific basis, an alternative monitoring method under the provisions of § 63.8(f).

^bFor new sources that commence construction or reconstruction after August 19, 2015, the compliance date is immediately upon startup. For existing sources, and new sources that commence construction or reconstruction after December 27, 1996, and on or before August 19, 2015, if your absorber is designed and operated with pressure drops of 5 inches of water column or less, then the compliance date is August 19, 2018. In the interim, for existing sources, and new sources that commence construction or reconstruction after December 27, 1996, and on or before August 19, 2015, with an absorber designed and operated with pressure drops of 5 inches of water column or less, you must comply with one of the following: (i) The monitoring requirements in this Table 3 for absorbers designed and operated with pressure drops of 5 inches of water column or less; (ii) the applicable monitoring provisions included in a permit issued under 40 CFR part 70 to assure compliance with subpart BB; (iii) the applicable monitoring provisions of an Alternative Monitoring Plan approved pursuant to § 63.8(f); or (iv) install CPMS for pressure at the gas stream inlet and outlet of the absorber, and monitor pressure drop through the absorber.

^cIf you select this option, then you must comply with § 63.628(e). The option to use blower design capacity is intended to establish the maximum possible gas flow through the absorber; and is available regardless of the location of the blower (influent or effluent), as long as the gas flow rate through the absorber can be established. Establish the minimum liquid-to-gas ratio operating limit by dividing the minimum liquid flow rate to the absorber (determined during a performance test) by the maximum possible gas flow rate through the absorber (determined using blower design capacity).

^dIf you select this option, then you must comply with § 63.628(f). The regression model must be developed using direct measurements of gas flow rate, and design fan curves that correlate gas flow rate to static pressure (*i.e.*, fan suction pressure) and brake horsepower of the blower. You must conduct an annual regression model verification using direct measurements of gas flow rate to ensure the correlation remains accurate. Direct measurements of gas flow rate used to develop or verify regression models may be collected during, or separately from, the annual performance testing that is required in § 63.626(b).

■ 11. Table 4 to subpart BB of part 63 is revised to read as follows:

TABLE 4 TO SUBPART BB OF PART 63—OPERATING PARAMETERS, OPERATING LIMITS AND DATA MONITORING, RECORDKEEPING AND COMPLIANCE FREQUENCIES

For the operating parameter applicable to you, as specified in Table 3 . . .	You must establish the following operating limit during your performance test . . .	And you must monitor, record, and demonstrate continuous compliance using these minimum frequencies . . .		
		Data measurement	Data recording	Data averaging period for compliance
Absorbers (Wet Scrubbers)				
Influent liquid flow Influent liquid flow rate and gas stream flow rate.	Minimum inlet liquid flow Minimum influent liquid-to-gas ratio ^a	Continuous	Every 15 minutes ...	Daily.
		Continuous	Every 15 minutes ...	Daily.
For the operating parameter applicable to you, as specified in Table 3.	You must establish the following operating limit.	And you must monitor, record, and demonstrate continuous compliance using these minimum frequencies . . .		
		Data measurement	Data recording	Data averaging period for compliance.
Pressure drop	Pressure drop range	Continuous	Every 15 minutes ...	Daily.
Sorbent Injection				
Sorbent injection rate	Minimum injection rate	Continuous	Every 15 minutes ...	Daily.

TABLE 4 TO SUBPART BB OF PART 63—OPERATING PARAMETERS, OPERATING LIMITS AND DATA MONITORING, RECORDKEEPING AND COMPLIANCE FREQUENCIES—Continued

For the operating parameter applicable to you, as specified in Table 3	You must establish the following operating limit during your performance test	And you must monitor, record, and demonstrate continuous compliance using these minimum frequencies		
		Data measurement	Data recording	Data averaging period for compliance
Sorbent injection carrier gas flow rate	Minimum carrier gas flow rate	Continuous	Every 15 minutes ...	Daily.
Fabric Filters				
Alarm time	Maximum alarm time is not established on a site-specific basis but is specified in § 63.605(f)(9).	Continuous	Each date and time of alarm start and stop.	Maximum alarm time specified in § 63.605(f)(9).
Wet Electrostatic Precipitator				
Secondary voltage	Secondary voltage range	Continuous	Every 15 minutes ...	Daily.

[FR Doc. 2017-20171 Filed 9-27-17; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2017-0213; FRL-9968-68-OAR]

RIN 2060-AT43

Protection of Stratospheric Ozone: Refrigerant Management Regulations for Small Cans of Motor Vehicle Refrigerant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to correct an editing oversight that led to a potential conflict in a prior rulemaking as to whether or not containers holding two pounds or less of non-exempt substitute refrigerants for use in motor vehicle air conditioning that are not equipped with a self-sealing valve can be sold to persons that are not certified technicians, provided those small cans were manufactured or imported prior to January 1, 2018. This action clarifies that those small cans may continue to be sold to persons that are not certified as technicians under sections 608 or 609 of the Clean Air Act.

DATES: This rule is effective on December 27, 2017 without further notice, unless EPA receives adverse comment by October 30, 2017. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-

OAR-2017-0213, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sara Kemme by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205T), 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone: (202) 566-0511; or by email: kemme.sara@epa.gov.

SUPPLEMENTARY INFORMATION

I. Why is EPA using a direct final rule?

EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This rule makes a minor change in regulatory text, which is intended to resolve a potential conflict in the current regulatory text

and to ensure that the regulatory text conforms to the EPA’s intention when finalizing the regulatory text at issue. However, in the “Proposed Rules” section of today’s **Federal Register**, we are publishing a separate document that will serve as the proposed rule to make this revision to the regulatory text if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. In this action, EPA is not making, and is not seeking comment on, any changes to the regulations at 40 CFR part 82, subpart F other than the revision discussed in this notice. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. In that case, we would address all public comments in any subsequent final rule based on the proposed rule. If no adverse comment is received by October 30, 2017, this direct final rule will be effective on December 27, 2017 without further notice and no further action will be taken on the proposed rule.

II. Does this action apply to me?

Categories and entities potentially affected by this action include entities that distribute or sell small cans of refrigerant for use in motor vehicle air conditioning (MVAC). Regulated entities include, but are not limited to, manufacturers and distributors of small cans of refrigerant (NAICS codes 325120, 441310, 447110) such as automotive parts and accessories stores and industrial gas manufacturers. This list is not intended to be exhaustive, but rather to provide a guide for readers

regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations at 40 CFR part 82, subpart F. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

III. What should I consider as I prepare my comments for EPA?

A. Submitting CBI. Do not submit this information to EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

IV. What action is the agency taking?

Section 608 of the Clean Air Act (CAA) bears the title “National

Recycling and Emission Reduction Program.” Under the structure of section 608, this program has three main components. First, section 608(a) requires EPA to establish standards and requirements regarding use and disposal of class I and II substances, including a comprehensive refrigerant management program to limit emissions of ozone-depleting refrigerants. The CAA directs EPA to include regulations that reduce the use and emissions of class I and II substances to the lowest achievable level and that maximize the recapture and recycling of such substances. The second component, section 608(b), requires that the regulations issued pursuant to subsection (a) contain requirements for the safe disposal of class I and class II substances. The third component, section 608(c), prohibits the knowing venting, release, or disposal of ozone-depleting refrigerants and their substitutes during the maintenance, service, repair, or disposal of air-conditioning and refrigeration appliances or industrial process refrigeration.

EPA first issued regulations under section 608 of the CAA on May 14, 1993 (58 FR 28660), to establish the national refrigerant management program for ozone-depleting refrigerants recovered during the maintenance, service, repair, and disposal of air-conditioning and refrigeration appliances. These regulations were intended to substantially reduce the use and emissions of ozone-depleting refrigerants. EPA revised these regulations through subsequent rulemakings published on August 19, 1994 (59 FR 42950), November 9, 1994 (59 FR 55912), August 8, 1995 (60 FR 40420), July 24, 2003 (68 FR 43786), March 12, 2004 (69 FR 11946), January 11, 2005 (70 FR 1972), May 23, 2014 (79 FR 29682), and April 10, 2015 (80 FR 19453). For a more detailed summary of the history of EPA’s Refrigerant Management Program see the discussion in the most recent update to these regulations at 81 FR 82272, 82275 (Nov. 18, 2016).

On November 9, 2015, EPA proposed the most recent updates to the refrigerant management regulations under section 608 of the CAA (80 FR 69458). Among other things, EPA proposed to extend the sales restriction to non-exempt substitute refrigerants with an exception for small cans of refrigerant for use in MVAC. That is, the proposed revisions would have restricted the sale of non-exempt substitute refrigerants to certified technicians, with an exception for small cans (two pounds or less) of non-exempt substitute refrigerant for the servicing of

MVACs¹ if the cans had a self-sealing valve. EPA requested comments on several aspects of this proposal including a scenario that would have included a sell-through provision for all small cans manufactured or imported prior to that effective date. 80 FR 69481. The proposal further stated that:

For manufacture and import of small cans of refrigerant for MVAC servicing, EPA is proposing a compliance date of one year from publication of the final rule. EPA is also proposing to allow small cans manufactured and placed into initial inventory or imported before that date to be sold for one additional year. For example, if the rule is published on July 1, 2016, small can manufacturers would have until July 1, 2017, to transition their manufacturing lines to add self-sealing valves. Manufacturers, distributors, and auto parts stores would be able to sell all small cans manufactured and placed into initial inventory or imported prior to July 1, 2017, until July 1, 2018. EPA seeks comments on this proposed implementation timeline. [80 FR 69509]

On November 18, 2016, EPA published a rule finalizing the proposed restriction that non-exempt substitute refrigerants may only be sold to technicians certified under sections 608 or 609 of the CAA. (81 FR 82280). In the case of refrigerant for use in MVAC, EPA finalized the exemption for the sale of certain small cans of non-ozone-depleting substitutes with a self-sealing valve to allow the do-it-yourself community to continue servicing their personal vehicles. *Id.* However, the agency did not finalize the sell-through provision. The preamble to the final rule states that, “EPA is requiring that small cans of non-exempt substitute refrigerant be outfitted with self-sealing valves by January 1, 2018. Based on comments, EPA is not finalizing the proposal to prohibit the sale of small cans that do not contain self-sealing valves that were manufactured or imported prior to that requirement taking effect.” *Id.* The preamble further stated:

With regards to small cans of MVAC refrigerant, manufacturers, distributors and retailers of automotive refrigerant supported the proposed “manufacture-by” date of one year from publication of the final rule, but commented that they oppose a sell-through date for small cans that do not have self-sealing valves. They commented that such a requirement would be inefficient, burdensome, costly, and environmentally problematic. It would require all retailers to know of the requirement and establish processes for returning unsold cans back to

¹ In this context, containers that meet these criteria are referred to interchangeably as “small cans of MVAC refrigerant,” “small cans of refrigerant for MVAC servicing,” or simply “small cans.”

the manufacturer for destruction. More likely, the cans may be improperly disposed of, which would negate the environmental benefit of the new provisions. One commenter stated that a “manufacture-by” date would shift EPA’s burden in ensuring compliance from a few manufacturers to thousands of retailers. Furthermore, commenters cited EPA’s July 2015 SNAP rule (80 FR 42901; July 20, 2015) which listed HFC–134a as unacceptable for use as an aerosol as of a “manufacture-by” date, rather than a “sell-by” date. [81 FR 82342]

EPA described its intention to allow the continued sale of small cans without self-sealing valves that were manufactured or imported before the January 1, 2018, compliance date as follows:

In response to the comments received on EPA’s proposal to allow small cans manufactured and placed into initial inventory or imported before that date to be sold for one additional year, EPA is not finalizing the sell-through requirement and is finalizing only a date by which small cans must be manufactured or imported with a self-sealing valve. EPA agrees that this is the least-burdensome option and that it avoids the potential for any unintended consequences of a “sell-by” date. [81 FR 82342]

These intentions were also expressed in the regulatory text at 40 CFR 82.154(c)(2), which was revised in the November 2016 rule to state: “*Self-sealing valve specifications.* This provision applies starting January 1, 2018, for all containers holding two pounds or less of non-exempt substitute refrigerant for use in an MVAC that are manufactured or imported on or after that date. (i) Each container holding two pounds or less of non-exempt substitute refrigerant for use in an MVAC must be equipped with a single self-sealing valve that automatically closes and seals when not dispensing refrigerant” However, because of an editing error, another provision, 40 CFR 82.154(c)(1)(ix), contains text that could be construed as contradicting the Agency’s clearly expressed intent to allow non-technicians to purchase, and retailers to sell, small cans of refrigerant for use in MVAC that were manufactured or imported before the January 1, 2018, compliance date irrespective of whether they have a self-sealing valve. The relevant text in 40 CFR 82.154(c)(1) provides that beginning January 1, 2018 no person may sell or distribute any non-exempt substitute for use as a refrigerant unless it “is intended for use in an MVAC and is sold in a container designed to hold two pounds or less of refrigerant, has a unique fitting, and has a self-sealing valve.”

The Automotive Refrigeration Products Institute and the Auto Care Association inquired about whether the language in 40 CFR 82.154(c)(1)(ix) effectively negates the provision in 40 CFR 82.154(c)(2) and the preamble discussion showing EPA’s intention to allow small cans of refrigerant for use in MVAC manufactured or imported before January 1, 2018, to continue to be sold without self-sealing valves. EPA is publishing this direct final rule to revise the regulatory text, so that persons in possession of small cans of refrigerant for use in MVAC without self-sealing valves that were manufactured or imported before January 1, 2018, can be assured that they will be able to sell off their existing inventories without disruption.

This action will eliminate burden associated with regulatory uncertainty in this area. The Automotive Refrigeration Products Institute and the Auto Care Association informed EPA that the lack of clarity surrounding the status of small cans of refrigerant for use in MVAC without self-sealing valves that were manufactured or imported before the compliance date is already creating confusion. Unless resolved, this lack of clarity could unnecessarily influence sales of automotive refrigerant during 2017. This is because retailers may not want to stock large numbers of these small cans of refrigerant for use in MVAC unless they are given some assurance that they will be able to sell off any remaining inventory after January 1, 2018. There is also the concern that if clarity is not provided by January 1, 2018, retailers may feel compelled to manually pull cans without self-sealing valves from their shelves and return the cans to their supplier(s). This rule will eliminate the cost of that stranded inventory and also eliminate other non-quantified burdens associated with the removal of such cans from the market, such as the labor involved in segregating small cans with self-sealing valves from those without self-sealing valves and physically pulling those from shelves.

V. Statutes and Executive Orders Review

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0256. These changes do not add information collection requirements beyond those currently required under the applicable regulations.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action clarifies that small cans of refrigerant for use in MVAC may be sold to persons who are not certified technicians even if they are not equipped with a self-sealing valve, so long as those small cans are manufactured or imported prior to January 1, 2018. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action corrects a potential conflict in the refrigerant management regulations as to whether or not small cans of refrigerant for use in MVAC could be sold to non-technicians if they were manufactured or imported prior to January 1, 2018, and do not have a self-sealing valve. This action clarifies that those small cans of refrigerant for use in MVAC may be sold to persons who are not certified technicians.

E. 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.

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

This action does not have tribal implications as specified in Executive Order 13175. This action corrects a potential conflict in the refrigerant management regulations as to whether or not small cans of refrigerant for use in MVAC could be sold to non-technicians if they were manufactured or imported prior to January 1, 2018, and do not have a self-sealing valve. Thus, Executive Order 13175 does not apply to this action.

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

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

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. 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).

This action does not affect the level of protection provided to human health or the environment. This action corrects a potential conflict in the refrigerant management regulations as to whether or not small cans of refrigerant for use in MVAC could be sold to non-technicians if they were manufactured or imported prior to January 1, 2018, and do not have a self-sealing valve. This action clarifies that those small cans of refrigerant for use in MVAC may be sold to persons who are not certified

technicians. The documentation for this decision is contained in Docket No. EPA–HQ–OAR–2017–0213, where EPA’s assessment of the underlying regulatory changes that led to this correction found no disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 82

Environmental protection, Air pollution control, Chemicals, Reporting and recordkeeping requirements.

Dated: September 21, 2017.

E. Scott Pruitt,
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 40 CFR part 82 as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. In § 82.154, revise paragraph (c)(1)(ix) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(c) * * *

(1) * * *

(ix) The non-exempt substitute refrigerant is intended for use in an MVAC and is sold in a container designed to hold two pounds or less of refrigerant, has a unique fitting, and, if manufactured or imported on or after January 1, 2018, has a self-sealing valve that complies with the requirements of paragraph (c)(2) of this section.

* * * * *

[FR Doc. 2017–20840 Filed 9–27–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1302

RIN 0970–AC63

Head Start Program

AGENCY: Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule; delay of compliance date.

SUMMARY: The Office of Head Start will delay the compliance date for background check procedures and the date for programs to participate in their state or local Quality Rating and Improvement Systems (QRIS). Both requirements are described in the Head Start Program Performance Standards (HSPPS) final rule that was published in the **Federal Register** on September 6, 2016. We believe programs and states will benefit from more time to fully implement these changes.

DATES: The date for programs to comply with background checks procedures described in 45 CFR 1302.90(b) and for programs to participate in QRIS described in 45 CFR 1302.53(b)(2) is delayed until September 30, 2018.

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, Division Director of Early Childhood Policy and Budget, Office of Early Childhood Development, *OHS_NPRM@acf.hhs.gov*, (202) 401–1195 (not a toll-free call). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION:

Background

The Head Start program provides grants to local public and private non-profit and for-profit agencies to provide comprehensive education and child development services to economically disadvantaged children, birth to age 5, and families and to help young children develop the skills they need to be successful in school. We amended our Head Start Program Performance Standards in a final rule that published in the **Federal Register** on September 6, 2016.

The Head Start Program Performance Standards define requirements grantees and delegate agencies must implement to operate high quality Head Start or Early Head Start programs and provide

a structure to monitor and enforce quality standards.

Promoting Child Safety and State Partnerships

Child safety is a top priority in the final rule. We strengthened our criminal background check requirements at 45 CFR 1302.90(b), in the final rule, to reflect changes in the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, and to complement background check requirements in the Child Care and Development Block Grant (CCDBG) Act of 2014, Public Law 113–186.

In addition to background check requirements, we aim to strengthen partnerships between states and Head Start programs. As part of this effort, 45 CFR 1302.53(b) in the final rule requires Head Start programs to take an active role in promoting coordinated early childhood systems, including those in their state. As part of these requirements, most Head Start programs must participate in QRIS, if they meet certain conditions.

Compliance Dates

In the **SUPPLEMENTARY INFORMATION** section of the final rule, we provided a table, *Table 1: Compliance Table* that lists dates by which programs must implement specific standards. We currently list September 30, 2017, as the date by which programs must comply with background check requirements at 45 CFR 1302.90(b). We had previously extended background check requirements until September 30, 2017, to align with the background check requirement deadline in the CCDBG Act through a **Federal Register** document, published on December 6, 2016. However, programs are required to continue to adhere to the criminal record check requirements in section 648A of Head Start Act, as amended by the Improving Head Start for School Readiness Act of 2007, Public Law 110–134. We list August 1, 2017, as the date programs must participate in their states' Quality Rating and Improvement Systems (QRIS) pursuant to 45 CFR 1302.53(b)(2).

Background Checks Procedures in the Final Rule

Generally, 45 CFR 1302.90(b)(1) requires that before a person is hired, programs must conduct a sex offender registry check and obtain either a state or tribal criminal history records, including fingerprint checks, or a Federal Bureau of Investigation (FBI) criminal history records, including fingerprint checks.

In 45 CFR 1302.90(b)(2), (4), and (5), we afford programs 90 days to obtain whichever check they could not obtain before the person was hired, as well as child abuse and neglect state registry check, if available. We require programs to have systems in place that ensure these newly hired employees do not have unsupervised access to children until their background process is complete. A complete background check consists of a sex offender registry check, state or tribal history records, including fingerprint check and FBI criminal history records, including fingerprint check, as well as a child abuse and neglect state registry check, if available. We also require programs to conduct complete background checks for each employee at least once every five years.

We believe programs will need more time to implement systems to complete the background checks process listed at 45 CFR 1302.90(b)(2), (4), and (5) in our final rule. Also, we recognize most states will have systems that can accommodate our programs' background checks requests by September 30, 2018. Congress requires states that receive CCDBG funds to implement systems for comprehensive background checks for all child care teachers and staff. These states must have requirements, as well as policies and procedures to enforce and conduct criminal background checks for existing and prospective child care providers, by September 30, 2017, but Congress gave states the authority to request extensions until September 30, 2018, and several states have done so. Since these systems enable Head Start programs to meet the HSPPS requirements in 45 CFR 1302.90(b), we can minimize burden on Head Start programs if we extend the compliance date for 45 CFR 1302.90(b) to September 30, 2018. Until September 30, 2018, the criminal record check requirements from section 648A of the Head Start Act continue to remain in place.

QRIS Requirement in the Final Rule

QRIS is a systemic approach to assess, improve, and communicate the level of quality in early and school-age care and education programs. QRIS award quality ratings to programs that meet a set of defined program standards. Since the 1990s, many states have developed a QRIS.

The requirements at 45 CFR 1302.53(b) require Head Start programs to take an active role in promoting coordinated early childhood systems to maximize access to services, reduce system duplication, foster informed quality improvement, and ensure Head Start programs are part of larger early

childhood systems within their states. These requirements went into effect on November 7, 2016. To further Head Start's role in state systems of quality improvement, the HSPPS requires programs to participate in QRIS, if they meet certain conditions described at 45 CFR 1302.53(b)(2).

We understood from the public comment process and from subsequent discussions with Head Start grantees and state organizations that there are concerns about the time and resources needed by both the states and grantees to ensure Head Start grantees are able to participate in their QRIS. We understand programs have taken steps to participate in QRIS and that many states are assessing their QRIS with new Head Start QRIS participation policies, but additional time is needed to align these systems. We want to minimize any unintentional burden on states that choose to adapt their systems to incorporate Head Start participation, as well as alleviate programs' concerns about meeting the current compliance date for participation in QRIS.

Given the variation in the state/local QRIS landscape and the applicability of the conditions in the regulation, the original compliance date for the requirement in the HSPPS at 45 CFR 1302.53(b)(2) was August 1, 2017 in the previously mentioned compliance table. Through this document, we are delaying the date by which programs must implement the specific requirement for QRIS participation until September 30, 2018. The broader requirement for Head Start programs to take an active role in promoting coordinated early childhood systems continues to be in effect.

Conclusion

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). 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.

We find good cause to waive public comment under section 553(b) of the APA because it is unnecessary and contrary to the public interest to provide for public comment in this instance. The delayed compliance date poses no harm or burden to programs or the public. A period for public comment would have only extended programs'

concerns about complying with these requirements by the compliance date. Programs may voluntarily come into compliance at an earlier date if they have the processes already in place. Programs that do not have processes already in place, have until September 30, 2018, to comply with the requirements on background checks at 45 CFR 1302.90(b) and the requirement to participate in their states' QRIS at 45 CFR 1302.53(b)(2).

Dated: September 6, 2017.

Steven Wagner,

Acting Assistant Secretary for Children and Families.

Approved: September 6, 2017.

Thomas E. Price,

Secretary.

[FR Doc. 2017-20499 Filed 9-27-17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130312235-3658-02]

RIN 0648-XF683

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Resources of the South Atlantic; Commercial Trip Limit Reduction for Vermilion Snapper

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

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit for vermilion snapper in or from the exclusive economic zone (EEZ) of the South Atlantic to 500 lb (227 kg), gutted weight, 555 lb (252 kg), round weight. This trip limit reduction is necessary to protect the South Atlantic vermilion snapper resource.

DATES: This rule is effective 12:01 a.m., local time, October 2, 2017, until 12:01 a.m., local time, January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727-824-5305, email: mary.vara@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery in the South Atlantic includes vermilion snapper and

is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The South Atlantic Fishery Management Council prepared the FMP. The FMP is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL (commercial quota) for vermilion snapper in the South Atlantic is divided into two 6-month time periods, January through June, and July through December. For the July 1 through December 31, 2017, fishing season, the commercial quota is 388,703 lb (176,313 kg), gutted weight, 431,460 lb (195,707 kg), round weight (50 CFR 622.190(a)(4)(ii)(D)). As specified in 50 CFR 622.190(a)(4)(iii), any unused portion of the commercial quota from the January through June 2017 fishing season will be added to the commercial quota for the July through December 2017 fishing season. Accordingly, NMFS determined that 20,379 lb (9,407 kg), round weight, of the commercial quota was not harvested in the January through June 2017 fishing season, and NMFS added that to the July through December commercial quota.

Under 50 CFR 622.191(a)(6)(ii), NMFS is required to reduce the commercial trip limit for vermilion snapper from 1,000 lb (454 kg), gutted weight, 1,110 lb (503 kg), round weight, to 500 lb (227 kg), gutted weight, 555 lb (252 kg), round weight, when 75 percent of the fishing season commercial quota is reached or projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on current information, NMFS has determined that 75 percent of the commercial quota for the July through December 2017 fishing season for vermilion snapper (including the January through June unused quota) was reached by September 19, 2017. Accordingly, NMFS is reducing the commercial trip limit for vermilion snapper to 500 lb (227 kg), gutted weight, 555 lb (252 kg), round weight, in or from the South Atlantic EEZ at 12:01 a.m., local time, on October 2, 2017. This reduced commercial trip limit will remain in effect until the start of the next commercial fishing season on January 1, 2018, or until the commercial quota is reached and the commercial sector closes, whichever occurs first.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic vermilion snapper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.191(a)(6)(ii) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this commercial trip limit reduction constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because prior notice and opportunity for public comment on this temporary rule is unnecessary and contrary to the public interest. Such procedures are unnecessary, because the rule establishing the trip limit and trip limit reduction has already been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction. Prior notice and opportunity for public comment is contrary to the public interest, because any delay in reducing the commercial trip limit could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the vermilion snapper resource, since the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment on this action would require time and increase the probability that the commercial sector could exceed its quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: September 25, 2017.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017-20792 Filed 9-25-17; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 82, No. 187

Thursday, September 28, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Doc. No. AO-SC-16-0136; AMS-SC-16-0074; SC16-982-1]

Hazelnuts Grown in Oregon and Washington; Secretary's Decision and Referendum Order on Proposed Amendments to Marketing Order No. 982

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to Marketing Order No. 982 (order), which regulates the handling of hazelnuts grown in Oregon and Washington, and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. Two amendments are proposed by the Hazelnut Marketing Board (Board), which is responsible for local administration of the order. The proposed amendments would add both the authority to regulate quality for the purpose of pathogen reduction and the authority to establish different regulations for different markets. In addition, the Agricultural Marketing Service (AMS) proposed to make any such changes as may be necessary to the order to conform to any amendment that may result from the public hearing. The proposals would aid in pathogen reduction and the industry's ability to meet the needs of different market destinations.

DATES: The referendum will be conducted from October 16, 2017, through November 3, 2017. The representative period for the purpose of the referendum is July 1, 2016, through June 30, 2017.

ADDRESSES: Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400

Independence Avenue SW., Stop 0237, Washington, DC 20250-0237.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, Post Office Box 952, Moab, UT 84532; Telephone: (202) 557-4783, Fax: (435) 259-1502, or Julie Santoboni, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Melissa.Schmaedick@ams.usda.gov or Julie.Santoboni@ams.usda.gov.

Small businesses may request information on this proceeding by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on September 27, 2016, and published in the September 30, 2016, issue of the **Federal Register** (81 FR 67217) and a Recommended Decision issued on June 5, 2017, and published in the June 12, 2017, issue of the **Federal Register** (82 FR 26859).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866, 13563, and 13175. Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Notice of this rulemaking action was provided to tribal governments through the Department of Agriculture's (USDA) Office of Tribal Relations.

Preliminary Statement

The proposed amendments are based on the record of a public hearing held on October 18, 2016, in Wilsonville, Oregon. The hearing was held pursuant

to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). Notice of this hearing was published in the **Federal Register** September 30, 2016 (81 FR 67217). The notice of hearing contained two proposals submitted by the Board and one submitted by USDA.

The amendments in this decision would:

(1) Add authority to regulate quality for the purpose of pathogen reduction;

(2) Add authority to establish different outgoing quality regulations for different markets; and

(3) Make any such changes as may be necessary to the order to conform to any amendment that may be adopted, or to correct minor inconsistencies and typographical errors.

USDA is recommending one clarifying change to the language in the proposed new paragraph 982.45(c), which would add authority to regulate quality. USDA has determined that the language as presented in the Notice of Hearing was redundant and, therefore, confusing. USDA has revised the proposed language in the new paragraph § 982.45 (c) so that its intent is more clearly stated. This new language is included in the proposed regulatory text of this decision.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on June 5, 2017, filed with the Hearing Clerk, USDA, a Recommended Decision and Opportunity to File Written Exceptions thereto by July 12, 2017. No exceptions were filed.

Final Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group

action of essentially small entities for their own benefit.

Hazelnut Industry Background and Overview

According to the hearing transcript, there are currently over 800 hazelnut growers in the production area. According to National Agricultural Statistics Service (NASS) data presented at the hearing, 2015 grower receipts averaged \$2,800 per ton. With a total 2015 production of 31,000 tons, the farm gate value for hazelnuts in that year totaled \$86.8 million (\$2,800 per ton multiplied by 31,000 tons). Taking the total value of production for hazelnuts and dividing it by the total number of hazelnut growers provides a return per grower of \$108,500. A small grower as defined by the Small Business Administration (SBA) (13 CFR 121.201) is one that grosses less than \$750,000 annually. Therefore, a majority of hazelnut growers are considered small entities under the SBA standards. Record evidence indicates that approximately 98 percent of hazelnut growers are small businesses.

According to the industry, there are 17 hazelnut handlers, four of which handle 80 percent of the crop. While market prices for hazelnuts were not included among the data presented at the hearing, an estimation of handler receipts can be calculated using the 2015 grower receipt value of \$86.8 million. Multiplying \$86.8 million by 80 percent (\$86.8 million \times 80 percent = \$69.4 million) and dividing by four indicates that the largest hazelnut handlers received an estimated \$17.3 million each. Dividing the remaining 20 percent of \$86.8 million, or \$17.4 million, by the remaining 13 handlers, indicates average receipts of \$1.3 million each. A small agricultural service firm is defined by the SBA as one that grosses less than \$7,500,000. Based on the above calculations, a majority of hazelnut handlers are considered small entities under SBA's standards.

The production area regulated under the order covers Oregon and Washington. According to the record, Eastern Filbert Blight has heavily impacted hazelnut production in Washington. One witness stated that there currently is no commercial production in that state. As a result, production data entered into the record pertains almost exclusively to Oregon.

NASS data indicates bearing acres of hazelnuts reached a fifteen-year high during the 2013–2014 crop year at 30,000 acres. Acreage has remained steady, at 30,000 bearing acres for the 2015–2016 crop year. By dividing

30,000 acres by 800 growers, NASS data indicate there are approximately 37.5 acres per grower. Industry testimony estimates that due to new plantings, there are potentially 60,000 bearing acres of hazelnuts, or an estimated 75 bearing acres per hazelnut grower.

During the hearing held October 18, 2016, interested parties were invited to present evidence on the probable regulatory impact of the proposed amendments to the order on small businesses. The evidence presented at the hearing shows that none of the proposed amendments would have a significant economic impact on a substantial number of small agricultural growers or firms.

Material Issue Number 1—Adding Authority To Regulate Quality

The proposal described in Material Issue 1 would amend § 982.45 to authorize the Board to establish minimum quality requirements and § 982.46 to allow for certification and inspection to enforce quality regulations.

Presently, the Board is charged with assuring hazelnuts meet grade and size standards. The Board also has the authority to employ volume control. If finalized, this proposal would authorize the Board to propose quality regulations that require a treatment to reduce pathogen load prior to shipping hazelnuts. Witnesses supported this proposal and stated that treatment regulation would not significantly impact the majority of handlers since most handlers already treat product prior to shipment. Witness testimony indicated that the proposed amendment would lower the likelihood of a product recall incident and the associated negative economic impacts. Witnesses noted that the proposed amendment would give the Board flexibility to ensure consumer confidence in the quality of hazelnuts.

It is determined that the additional costs incurred to regulate quality would be greatly outweighed by the increased flexibility for the industry to respond to changing quality regulation and food safety. There is expected to be no financial impact on growers. Mandatory treatment requirements should not cause dramatic increases in handler operating costs, as most already voluntarily treat hazelnuts. Handlers bear the direct cost associated with installing and operating treatment equipment or contract out the treatment of product to a third party.

According to the industry, most domestic hazelnut product is shipped to California for treatment with propylene oxide. The cost to ship and treat product

is estimated to be 10 cents per pound or less. Using 2014–2015 shipment data, at 10 cents per pound, the cost to ship and treat the 6.5 million pounds of Oregon hazelnuts shipped to the domestic market is not expected to exceed \$650,000. Shipments to foreign markets typically do not require treatment and therefore have no associated treatment costs. Large handlers who wish to install treatment equipment may face costs ranging from \$100,000 to \$5,000,000 depending on the treatment system.

One witness noted that mandatory treatment would benefit the industry by addressing the free-rider situation in which handlers who do not treat the product benefit from consumer confidence while incurring additional risks. Handlers that do treat product absorb all costs of treatment while building the reputation of the industry.

The record shows that the proposal to add authority to establish different outgoing quality requirements for different markets would, in itself, have no economic impact on growers or handlers of any size. Regulations implemented under that authority could impose additional costs on handlers required to comply with them. However, witnesses testified that establishing mandatory regulations for different markets could increase the industry's credibility and reduce the risk that shipments of substandard product could jeopardize the entire industry's reputation. Record evidence shows that any additional costs are likely to be offset by the benefits of complying with those requirements.

For the reasons described above, it is determined that the costs attributed to the above-proposed changes are minimal; therefore, the proposal would not have a significant economic impact on a substantial number of small entities.

Material Issue Number 2—Adding Authority for Different Market Regulations

The proposal described in Material Issue 2 would allow for the establishment of different outgoing quality regulations for different markets.

Witnesses testified that allowing different regulations for different markets would likely lower the costs to handlers and prevent multiple treatments of hazelnuts while preserving hazelnut quality.

Certain buyers of hazelnuts do not require prior treatment and perform their own kill-step processes such as roasting, baking or pasteurization. A witness stated that two of the largest buyers of hazelnuts, Diamond of

California and Kraft Foods, Inc. choose to treat product after arrival.

Shipments to foreign markets often do not require treatment and are treated after exportation. Testimony indicated that during the 2014–2015 season, of the 9.5 million pounds of kernel hazelnuts shipped to Canada, almost all were further treated by the customers. In conjunction with the proposed quality authority discussed in Material Issue 1, specific regulation could be developed to exempt exported product, subject to further pathogen-reduction treatment in the country of purchase, from mandatory treatment. In Canada, the purchaser, not the handler, is responsible for providing pathogen reduction treatment. Requiring handlers to treat hazelnuts before export would be duplicative in cost and treatment. At 10 cents per pound, it is estimated that on sales to Canada alone, handler savings could reach as much as \$950,000 (9.5 million pounds of shipments multiplied by 10 cents per pound), if exempted from the mandatory treatment requirement. Hazelnuts shipped to China are typically processed after arrival and also do not necessitate treatment by handlers in the United States.

China is a major export market for inshell hazelnuts. According to the hearing transcript, from 2011–2015, 54 percent of inshell hazelnuts were exported. The total value of inshell exports was approximately \$41,340,780, if 54 percent is multiplied by the \$76,557,000 total hazelnut exports. In 2015–2016 China received 90 percent of U.S. inshell hazelnut exports. The 2015–2016 value of U.S. hazelnut exports to China is estimated to be approximately \$37,206,702, or 90 percent of the value of all U.S. inshell exports. Oregon hazelnuts compete primarily with Turkish (kernel) and Chilean (inshell) hazelnuts. Testimony indicates that multiple treatments of hazelnuts would likely affect the quality of hazelnuts. Allowing for different regulations for different markets would help Oregon and Washington hazelnuts compete in foreign markets and maintain U.S. market share. It is estimated that 80 to 90 percent of product is already being treated, and thus, the cost has already been incorporated into the price purchasers pay.

One witness noted that shipments to the European Union may require different regulations since this market prefers certain treatment processes.

The record shows that the proposal to add authority to establish different outgoing quality requirements for different markets would, in itself, have

no economic impact on growers or handlers of any size. Regulations implemented under that authority could potentially impose additional costs on handlers required to comply with them.

For the reasons described above, it is determined that the benefits of adding authority for different market regulations to the order would outweigh the potential costs of future implementation.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are intended to improve the operation and administration of the order and to assist in the marketing of hazelnuts.

Board meetings regarding these proposals, as well as the hearing date and location, were widely publicized throughout the Oregon and Washington hazelnut industry, and all interested persons were invited to attend the meetings and the hearing to participate in Board deliberations on all issues. All Board meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory impacts of this action on small businesses.

Paperwork Reduction Act

Current information collection requirements for part 982 are approved by OMB, under OMB Number 0581–0189—“Generic OMB Fruit Crops.” No changes are anticipated in these requirements as a result of this proceeding. Should any such changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Civil Justice Reform

The amendments to the order proposed herein have been reviewed under Executive Order 12988, Civil

Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Findings and Conclusions

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the June 12, 2017, issue of the **Federal Register** (82 FR 26859) are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled “Order Amending the Order Regulating the Handling of Hazelnuts Grown in Oregon and Washington.” This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, that this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400–407) to determine whether the annexed order amending the order regulating the handling of hazelnuts grown in Oregon and Washington is approved or favored by growers, as defined under the terms of the order, who during the representative period were engaged in the production of hazelnuts in the production area.

The representative period for the conduct of such referendum is hereby determined to be July 1, 2016, through June 30, 2017.

The agents of the Secretary to conduct such referendum are hereby designated to be Dale Novotny and Gary Olson, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1220 SW Third Avenue, Suite 305, Portland, Oregon 97204; telephone: (503) 326-2724; or fax: (503) 326-7440 or Email: DaleJ.Novotny@ams.usda.gov or GaryD.Olson@ams.usda.gov, respectively.

Order Amending the Order Regulating the Handling of Hazelnuts Grown in Oregon and Washington¹

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary to the findings and determinations that were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record*
Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon proposed further amendment of Marketing Order No. 982, regulating the handling of hazelnuts grown in Oregon and Washington.

Upon the basis of the record, it is found that:

(1) The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of hazelnuts grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order upon which a hearing has been held;

(3) The marketing order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area that is practicable, consistent with carrying out the declared policy of the

Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of hazelnuts grown in Oregon and Washington; and

(5) All handling of hazelnuts grown in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of hazelnuts grown in Oregon and Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the order contained in the Recommended Decision issued on June 5, 2017, and published in the June 12, 2017, issue of the **Federal Register** (82 FR 26859) will be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 982

Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

Recommended Further Amendment of the Marketing Order

For the reasons set out in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601-674.

Subpart A—[Amended]

■ 2. Designate the subpart labeled “Order Regulating Handling” as subpart A.

■ 3. Revise § 982.12 to read as follows:

§ 982.12 Merchantable hazelnuts.

Merchantable hazelnuts means inshell hazelnuts that meet the grade, size, and quality regulations in effect pursuant to § 982.45 and are likely to be

available for handling as inshell hazelnuts.

■ 4. Amend § 982.40 by revising paragraph (d) to read as follows:

§ 982.40 Marketing policy and volume regulation.

* * * * *

(d) *Grade, size, and quality regulations.* Prior to September 20, the Board may consider grade, size, and quality regulations in effect and may recommend modifications thereof to the Secretary.

* * * * *

■ 5. Revise the undesignated center heading prior to § 982.45 to read as follows:

Grade, Size, and Quality Regulation

■ 6. In § 982.45:

■ a. Revise the section heading; and

■ b. Add new paragraphs (c) and (d).

The revisions to read as follows:

§ 982.45 Establishment of grade, size, and quality regulations.

* * * * *

(c) *Quality regulations.* For any marketing year, the Board may establish, with the approval of the Secretary, such minimum quality and inspection requirements applicable to hazelnuts to facilitate the reduction of pathogens as will contribute to orderly marketing or will be in the public interest. In such marketing year, no handler shall handle hazelnuts unless they meet applicable minimum quality and inspection requirements as evidenced by certification acceptable to the Board.

(d) *Different regulations for different markets.* The Board may, with the approval of the Secretary, recommend different outgoing quality requirements for different markets. The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this provision.

■ 7. Amend § 982.46 by adding paragraph (d) to read as follows:

§ 982.46 Inspection and certification.

* * * * *

(d) Whenever quality regulations are in effect pursuant to § 982.45, each handler shall certify that all product to be handled or credited in satisfaction of a restricted obligation meets the quality regulations as prescribed.

Subpart B—Grade and Size Requirements

■ 8. Designate the subpart labeled “Grade and Size Regulation” as subpart B and revise the heading as shown above.

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Subpart C—[Amended]

■ 9. Designate the subpart labeled “Free and Restricted Percentages” as subpart C.

Subpart D—[Amended]

■ 10. Designate the subpart labeled “Assessment Rates” as subpart D.

Subpart E—Administrative Requirements

■ 11. Designate the subpart labeled “Administrative Rules and Regulations” as subpart E and revise the heading as shown above.

Dated: September 14, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–19920 Filed 9–27–17; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION**13 CFR Part 134**

RIN 3245–AG87

Rules of Practice for Protests and Appeals Regarding Eligibility for Inclusion in the U.S. Department of Veterans Affairs, Center for Verification and Evaluation Database

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) is proposing to amend the rules of practice of its Office of Hearings and Appeals (OHA) to implement procedures for protests of eligibility for inclusion in the Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) database, and procedures for appeals of denials and cancellations of inclusion in the CVE database. These amendments would be in accordance with Sections 1832 and 1833 of the National Defense Authorization Act for Fiscal Year 2017 (NDAA 2017).

DATES: Comments must be received on or before October 30, 2017.

ADDRESSES: You may submit comments, identified by RIN 3245–AG87 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail, Hand Delivery/Courier:* Delorice Price Ford, Assistant Administrator for Hearings and Appeals, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please submit the information to Daniel K. George, Attorney Advisor, Office of Hearings and Appeals, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, or send an email to Daniel.George@sb.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Daniel K. George, Attorney Advisor, at (202) 401–8200 or Daniel.George@sb.gov.

SUPPLEMENTARY INFORMATION:**Background**

Sections 1832 and 1833 of the NDAA 2017 authorized the SBA’s OHA to determine protests and appeals related to inclusion in the CVE database. In order to implement these sections, this proposed rule would amend OHA’s jurisdiction at subparts A and B of 13 CFR part 134 to include protests of eligibility for inclusion in the CVE database and appeals of denials and cancellations of inclusion in the CVE database. In addition, the proposed rule would create a new subpart J in 13 CFR part 134 to set out detailed rules of practice for protests of eligibility for inclusion in the VA CVE database, and a new subpart K to set out detailed rules of practice for appeals of denials and cancellations of verification for inclusion in the VA’s CVE database.

Section-by-Section Analysis*A. 13 CFR Part 134 Subparts A and B*

SBA proposes to amend § 134.102, the rules for establishing OHA jurisdiction, to add protests of eligibility for inclusion in the CVE database and appeals of denials and cancellations of inclusion in the CVE database, as two new types of proceedings over which OHA would have jurisdiction. New § 134.102(u) would allow for protests of eligibility for inclusion in the CVE database. New § 134.102(v) would allow for appeals of denials and cancellations of inclusion in the CVE database.

SBA also proposes to amend § 134.201(b) by adding new paragraphs (8) and (9) to include protests of eligibility for inclusion in the CVE database and appeals of denials and cancellations of inclusion in the CVE database. As a result of these new

paragraphs, existing § 134.201(b)(8) would be redesignated as § 134.201(b)(10).

B. 13 CFR Part 134, Subpart J

SBA proposes to add new subpart J, consisting of §§ 134.1001–1013, in order to conform OHA’s rules of practice for protests of eligibility for inclusion in the CVE database (CVE Protests). As a result, the new rules of practice for protests of eligibility for inclusion in the CVE database would mirror SBA’s existing rules for protests of service-disabled veteran owned small businesses, found in 13 CFR part 125 subpart D.

Proposed § 134.1001(b) states that the provisions of subparts A and B also apply to protests of eligibility for inclusion in the CVE database. Section 134.1001(c) adds that the protest procedures are separate from those governing Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) protests for non-VA procurements, which are subject to 13 CFR part 125. Section 134.1001(d) states that protests of a concern’s eligibility for a non-VA procurement as an SDVO SBC are governed by 13 CFR part 125. In addition, § 134.1001(e) specifies that appeals that relate to a determination made by the SBA’s Director, Office of Government Contracting (D/GC) are governed by subpart E of 13 CFR part 125.

As proposed in § 134.1002, the Secretary of the VA, or his/her designee, as well as the Contracting Officer (CO) or an offeror in a VA procurement awarded to a small business may file a CVE Protest. A protesting offeror need not be the offeror next in line for award.

Section 134.1003 establishes the grounds for filing a CVE Protest as status, and ownership and control. Paragraph (c) requires the Judge to determine a protested concern’s eligibility for inclusion in the CVE as of the date the protest was filed.

Section 134.1004(a) establishes the deadlines for filing a CVE Protest, which is at any time for the Secretary of the VA and any time during the life of a contract for the CO. Paragraph (a)(2)(i) instructs that an offeror must file its protest within five days of being notified of the identity of the apparent awardee. Paragraphs (a)(3) and (4) indicate the rule for counting days and that any untimely protest will be dismissed. Paragraph (b) describes the methods for filing a CVE Protest by interested parties. A CVE Protest brought by an offeror is filed with the CO, who then forwards the protest to OHA.

Section 134.1005 specifies the contents that every CVE Protest must have. Paragraph (b) would require a protective order be requested within five days of a protest being filed.

Section 134.1006 would apply the servicing and filing requirements found at § 134.204.

Section 134.1007 would establish the process of CVE Protests as follows: Paragraph (a) would require OHA to issue a notice and order if the protest is found to be timely, specific, and based on protectable allegations; paragraph (b) would require dismissal of a protest if the Judge determines the protest to be premature, untimely, nonspecific, or based on non-protectable allegations; paragraph (c) would require the Director of the CVE (D/CVE) to send the case file to OHA by the deadline specified in the notice and order; paragraph (d) describes the process for requesting a protective order; paragraph (e) allows for supplemental arguments after a protester reviews the CVE case file; paragraph (f) allows for a response to a protest within 15 days of the date the protest was filed; and paragraph (g) would require the Judge to base the decision on the case file and information provided by the parties or information requested by the Judge. The Judge may also investigate issues beyond those raised by the parties. Paragraph (h) proposes to allow a CO to award the contract after a protest is filed but before a decision is reached if the CO determines the public interest will be protected and notifies the Judge of his/her decision; paragraph (i) would require OHA to serve all parties with the decision, which would be considered a final agency decision; finally, paragraph (j) stipulates the effects of the decision upon the protested concern and the contract at issue.

Section 134.1008 prohibits discovery in CVE Protest proceedings.

Section 134.1009 allows for oral hearings only in extraordinary circumstances, as found by the Judge, and establishes that if a hearing is allowed, it would be conducted in accordance with the rules of practice in subpart B of Part 134.

Section 134.1010 establishes the standard of review as preponderance of the evidence, in which the burden of proof falls on the protested firm, not the protester.

Section 134.1011 specifies that the Judge will give greater weight to specific, signed, factual evidence than to unsupported allegations and opinions, and provides that the Judge may draw an adverse inference from failure to produce relevant information.

Section 134.1012 applies the provisions of § 134.225 where relevant.

Under § 134.1013, there will be no appeal of OHA's decision on a CVE Protest. However, paragraph (a) allows for the Judge to reconsider a CVE Protest decision if a party to the proceeding files a petition for reconsideration within twenty (20) calendar days after issuance of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative. Paragraph (b) states that if the Judge reverses the initial decision on reconsideration, the CO must comply with § 134.1007(j) in applying the new decision's results.

C. 13 CFR Part 134, Subpart K

The rule proposes a new subpart K to cover the procedures for filing appeals of denials and cancellations of verification for inclusion in the VA CVE database (CVE Appeals). Section 134.1101 states that the provisions of subparts A and B also apply to CVE Appeals. Section 134.1101(c) adds that the appeal procedures for CVE Appeals are separate from those governing SDVO SBC status appeals based on D/GC determinations, which are subject to 13 CFR 134 subpart E. Paragraph (d) states that protests of a concern's eligibility for inclusion in the VA's CVE database are governed by 13 CFR 134 subpart J.

Section 134.1102 establishes standing to file a CVE Appeal upon a concern that has been denied verification of its CVE status or had its CVE status cancelled.

Section 134.1103 permits CVE Appeals to OHA as long as the denial or cancellation was not based on the concern's failure to meet any veteran or service-disabled veteran eligibility criteria.

Section 134.1104 requires CVE Appeals to be filed within 10 business days of being notified that the CVE status has been denied or cancelled. Paragraph (b) establishes the rules for counting days as those in § 134.202(d). Paragraph (c) requires OHA to dismiss any untimely appeal.

Section 134.1105(a) requires the appeal petition to include a copy of the denial or cancellation, a statement as to why the cancellation or denial is in error, any information the appellant believes the Judge should consider, and the name, address, telephone number, facsimile number, and signature of appellant or its attorney. Paragraph (b) requires that the appellant serve copies of the appeal upon the D/CVE and VA counsel. Paragraph (c) requires all appeal petitions to include a certificate

of service that meets the requirements of § 134.204(d). Paragraph (d) allows the Judge to dismiss appeal petitions that do not meet all the requirements of § 134.1105.

Section 134.1106 applies the provisions in § 134.204 regarding the service and filing requirements of all pleadings and submissions allowed under 13 CFR part 134, subpart K.

Section 134.1107 requires the D/CVE to send OHA the entire case file relating to the denial or cancellation, by the deadline specified in the notice and order. The case file must be authenticated and certified that it is the true and correct copy of the case file, to the best knowledge of the D/CVE.

Section 134.1108 would permit a response to the appeal petition. Paragraph (a) allows the D/CVE, or his/her designee, or VA counsel, to respond to the appeal. Paragraph (b) establishes the close of record as 15 days after the Judge issues a notice and order informing all parties of the filing of the appeal. The notice and order would establish the date all responses to the appeal petition would be due. Paragraph (c) requires all respondents to serve their response upon all parties identified in the certificate of service attached to the appeal petition, as required by § 134.1105. Paragraph (d) prevents a reply to a response, unless allowed by the Judge.

Section 134.1109 does not allow for discovery or oral hearings in CVE Appeals.

Section 134.1110 prevents new evidence in CVE Appeals, unless good cause is shown.

Under § 134.1111, the standard of review for CVE Appeals would be whether the denial or cancellation by the D/CVE was based on clear error of fact or law, which the appellant would have the burden of proof.

Under § 134.1112(a), the Judge will decide a CVE Appeal, if practicable, within 60 calendar days after the close of record. Paragraph (b) requires the decision to contain findings of fact and conclusions of law, and any reasons for those findings and conclusions, and any relief so ordered. Paragraph (c) requires decisions to be based primarily on the evidence in the CVE case file, and arguments made during the appeal process. The Judge will, however, have the ability to consider issues that are beyond those raised by any pleading or in the denial or cancellation letter. Paragraph (d) establishes a Judge's decision as the final agency decision, becoming effective immediately. If OHA dismisses an appeal of a D/CVE denial or cancellation, the D/CVE determination remains in effect.

Paragraph (e) requires OHA to serve a copy of the decision on all parties, or their counsel if represented. Paragraph (f) stipulates that if the appeal is granted and the appellant is found eligible for inclusion in the CVE database, the D/CVE must reinstate or include the appellant in the CVE database immediately. Paragraph (g) allows any party that has appeared in the proceeding, or the Secretary of VA or his or her designee, to file a petition for reconsideration. The petition must be filed within twenty (20) calendar days after service of the written decision, upon a clear showing of an error of fact or law material to the decision. The Judge also may reconsider a decision on his or her own initiative.

Compliance With Executive Orders 12866, 12988, 13132, 13771, and the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

OMB has determined that this rule does not constitute a “significant regulatory action” under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act, 5 U.S.C. 800. This proposed rule would amend the rules of practice for the SBA’s OHA in order to implement procedures for protests of eligibility for inclusion in the CVE database and appeals of denials and cancellations of inclusion in the CVE database. As such, the rule has no effect on the amount or dollar value of any Federal contract requirements or of any financial assistance provided through SBA or VA. Therefore, the rule is not likely to have an annual economic effect of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. In addition, this rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of such recipients, nor raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce

burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

This rule does not have Federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Executive Order 13771

This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

Paperwork Reduction Act

The SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 601–612, requires Federal agencies to prepare an initial regulatory flexibility analysis (IRFA) to consider the potential impact of the regulations on small entities. Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule would revise the regulations governing cases before SBA’s Office of Hearings and Appeals (OHA), SBA’s administrative tribunal. These regulations are procedural by nature. Specifically, the proposed rule would establish rules of practice for the SBA’s OHA in order to implement protests of eligibility for inclusion in the CVE database and appeals of denials and cancellations of inclusion in the CVE database, new types of administrative litigation mandated by sections 1832 and 1833 of the National Defense Authorization Act for Fiscal Year 2017. This legislation provides a new statutory right to challenge eligibility for inclusion in the CVE database, as well as denials and cancellation of inclusion in the CVE database. This proposed rule merely provides the rules of practice at OHA for

the orderly hearing and disposition of CVE database inclusion protests and denials and cancellations of CVE database inclusion. While SBA does not anticipate that this proposed rule would have a significant economic impact on any small business, we do welcome comments from any small business setting out how and to what degree this proposed rule would affect it economically. Therefore, the Administrator of SBA certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 134

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Organization and functions (government agencies).

For the reasons stated in the preamble, SBA proposes to amend 13 CFR part 134 as follows:

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

- 1. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), and 687(c); 38 U.S.C. 8127(f); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

- 2. Amend § 134.102 by adding paragraphs (u) and (v) to read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(u) Protests of eligibility for inclusion in the Department of Veterans Affairs Center for Verification and Evaluation (CVE) database;

(v) Appeals of denials and cancellations of inclusion in the CVE database.

- 3. Amend § 134.201 by:
 - a. Removing the word “and” in paragraph (b)(7);
 - b. Redesignating paragraph (b)(8) as paragraph (b)(10);
 - c. Adding new paragraphs (b)(8) and (b)(9).

The additions read as follows:

§ 134.201 Scope of the rules in this Subpart B.

* * * * *

(b) * * *

(8) For protests of eligibility for inclusion in the Center for Verification and Evaluation (CVE) database, in subpart J of this part;

(9) For appeals of denials and cancellations of inclusion in the CVE database, in subpart K of this part; and

* * * * *

■ 4. Add subpart J to read as follows:

Subpart J—Rules of Practice for Protests of Eligibility for Inclusion in the U.S.

Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) Database (CVE Protests)

Sec.

- 134.1001 Scope of rules.
- 134.1002 Who may file a CVE Protest?
- 134.1003 Grounds for filing a CVE Protest.
- 134.1004 Commencement of CVE Protests.
- 134.1005 Contents of the CVE Protest.
- 134.1006 Service and filing requirements.
- 134.1007 Processing a CVE Protest.
- 134.1008 Discovery.
- 134.1009 Oral hearings.
- 134.1010 Standard of review and burden of proof.
- 134.1011 Weight of evidence.
- 134.1012 The record.
- 134.1013 Request for reconsideration.

Authority: 38 U.S.C. 8127(f)(8)(B).

Subpart J—Rules of Practice for Protests of Eligibility for Inclusion in the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) Database (CVE Protests)

§ 134.1001 Scope of rules.

(a) The rules of practice in this subpart J apply to Department of Veterans Affairs (VA) Center for Verification and Evaluation protests (CVE Protests).

(b) Except where inconsistent with this subpart, the provisions of subparts A and B of this part apply to protests listed in paragraph (a) of this section.

(c) The protest procedures described in this subpart are separate from those governing protests and appeals of a concern's size or status as a Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) for a non-Department of Veterans Affairs (non-VA) procurement. All protests relating to whether a veteran-owned concern is a "small" business for purposes of any Federal program are subject to part 121 of this chapter and must be filed in accordance with that part. If a protester protests both the size of the concern and the concern's eligibility for the CVE database, SBA will process each protest concurrently. All protests relating to a concern's status as a SDVO SBC for a non-VA procurement are subject to part 125 of this chapter and must be filed in accordance with that part. SBA does not review issues concerning contract administration.

(d) Protests of a concern's eligibility for a non-VA procurement as a SDVO SBC are governed by 13 CFR part 125 subpart D.

(e) Appeals relating to determinations made by SBA's Director, Office of

Government Contracting regarding SDVO SBC status are governed by subpart E of this part.

(f) Appeals of denials and cancellations of verification for inclusion in the CVE database are governed by subpart K of this part.

§ 134.1002 Who may file a CVE Protest?

A CVE Protest may be filed by:

(a) The Secretary of the VA, or his/her designee; or

(b) In the case of a small business that is awarded a contract for a VA procurement, the contracting officer or an offeror.

§ 134.1003 Grounds for filing a CVE Protest.

(a) *Status.* In cases where the protest is based on service-connected disability, permanent and severe disability, or veteran status, the Judge will only consider a protest that presents specific allegations supporting the contention that the owner(s) cannot provide documentation from the VA, Department of Defense, or the U.S. National Archives and Records Administration to show that they meet the definition of veteran, service-disabled veteran, or service-disabled veteran with a permanent and severe disability.

(b) *Ownership and control.* In cases where the protest is based on ownership and control, the Judge will consider a protest only if the protester presents credible evidence that the concern is not 51% owned and controlled by one or more veterans or service-disabled veterans.

(c) *Date for Determining Eligibility.* The Judge will determine a protested concern's eligibility for inclusion in the CVE database as of the date the protest was filed.

§ 134.1004 Commencement of CVE Protests.

(a) *Timeliness.* (1) The Secretary of the VA, or his/her designee, may file a CVE Protest at any time.

(2) Where the CVE Protest is in connection with a VA procurement:

(i) An offeror must file a CVE Protest within five business days of notification of the apparent awardee's identity.

(ii) A contracting officer may file a CVE Protest at any time during the life of the VA contract.

(3) The rule for counting days is in § 134.202(d).

(4) An untimely protest will be dismissed.

(b) *Filing.* (1) *Private Parties.* Interested parties, other than the contracting officer or Secretary of the VA or his/her designee, must deliver

their CVE Protests in person, by email, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period) to the contracting officer.

(2) *Referral to OHA.* The contracting officer must forward to OHA any non-premature CVE Protest received, notwithstanding whether he/she believes it is sufficiently specific or timely. The contracting officer must send all CVE Protests, along with a referral letter, directly to OHA, addressed to Office of Hearings and Appeals, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, by email at OHAfilings@sba.gov, or by facsimile to (202) 205-6390, marked Attn: CVE Protest. The referral letter must include information pertaining to the solicitation that may be necessary for OHA to determine timeliness and standing, including:

(i) The solicitation number;

(ii) The name, address, telephone number, email address, and facsimile number of the contracting officer;

(iii) Whether the contract was sole source or set-aside;

(iv) Whether the protester submitted an offer;

(v) Whether the protested concern was the apparent successful offeror;

(vi) Whether the procurement was conducted using sealed bid or negotiated procedures;

(vii) The bid opening date, if applicable;

(viii) When the protest was submitted to the contracting officer;

(ix) When the protester received notification about the apparent successful offeror, if applicable; and

(x) Whether a contract has been awarded.

(3) *Protests filed by Secretary of the VA.* The Secretary of VA or his/her designee must submit his/her CVE Protest directly to OHA in accordance with the procedures in § 134.204.

(4) *Protests filed by a contracting officer.* The contracting officer must submit his/her CVE Protest directly to OHA in accordance with the procedures in § 134.204. The protest should include the information set forth in the referral letter in Paragraph (2).

§ 134.1005 Contents of the CVE Protest.

(a) CVE Protests must be in writing. There is no required format for a CVE Protest, but it must include the following:

(1) The solicitation or contract number, if applicable;

(2) Specific allegations supported by credible evidence that the concern does not meet the eligibility requirements for

inclusion in the CVE database, listed in § 134.1003;

(3) Any other pertinent information the Judge should consider; and

(4) The name, address, telephone number, and email address or facsimile number, if available, and signature of the protester or its attorney.

(b) If the protester intends to seek access to the CVE case file under § 134.205, the protester should include in its protest a request for a protective order. Unless good cause is shown, a protester must request a protective order within five days of filing the protest.

§ 134.1006 Service and filing requirements.

The provisions of § 134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart.

§ 134.1007 Processing a CVE Protest.

(a) *Notice and order.* If the Judge determines that the protest is timely, sufficiently specific, and based upon protestable allegations, the Judge will issue a notice and order, notifying the protester, the protested concern, the Director, CVE (D/CVE), VA Counsel, and, if applicable, the contracting officer of the date OHA received the protest and ordering a due date for responses.

(b) *Dismissal of protest.* If the Judge determines that the protest is premature, untimely, nonspecific, or is based on non-protestable allegations, the Judge will dismiss the protest and will send the contracting officer, D/CVE, and the protester a notice of dismissal, citing the reason(s) for the dismissal. The dismissal is a final agency action.

(c) *Transmission of the case file.* Upon receipt of a notice and order, the D/CVE must deliver to OHA the entire case file relating to the protested concern's inclusion in the CVE database. The notice and order will establish the timetable for transmitting the case file to OHA. The D/CVE must certify and authenticate that the case file, to the best of his/her knowledge, is a true and correct copy of the case file.

(d) *Protective order.* A protester seeking access to the CVE case file must file a timely request for a protective order under § 134.205. Except for good cause, a protester must request a protective order within five days of filing the protest. Even after issuance of a protective order, OHA will not disclose income tax returns or privileged information.

(e) *Supplemental allegations.* If, after viewing documents in the CVE case file for the first time under a protective order, a protester wishes to supplement its protest with additional argument, the

protester may do so. Any such supplement is due at OHA no later than 15 days from the date the protester receives or reviews the CVE case file.

(f) *Response.* (1) The protested concern, the D/CVE, the contracting officer, and any other interested party may respond to the protest and supplemental protest, if one is filed. The response is due no later than 15 days from the date the protest or supplemental protest was filed with OHA. The record closes the date the final response is due.

(2) *Service.* The respondent must serve its response upon the protester or its counsel and upon each of the persons identified in the certificate of service attached to the notice and order or, if a protective order is issued, in accordance with the terms of the protective order.

(3) *Reply to a response.* No reply to a response will be permitted unless the Judge directs otherwise.

(g) *Basis for decision.* The decision will be based primarily on the case file and information provided by the protester, the protested concern, and any other parties. However, the Judge may investigate issues beyond those raised in the protest and may use other information or make requests for additional information to the protester, the protested concern, or VA.

(h) *Award of contract.* The contracting officer may award a contract during the period between the date he/she receives a protest and the date the Judge issues a decision only if the contracting officer determines that an award must be made to protect the public interest and notifies the Judge in writing of any such determination. Notwithstanding such a determination, the provisions of paragraph (j) of this section shall apply to the procurement in question.

(i) *The decision.* OHA will serve a copy of the written decision on each party, or, if represented by counsel, on its counsel. The decision is considered the final agency action, and it becomes effective upon issuance.

(j) *Effect of decision.* (1) A contracting officer may award a contract to a protested concern after the Judge has determined either that the protested concern is eligible for inclusion in the CVE database or has dismissed all protests against it.

(2) A contracting officer shall not award a contract to a protested concern that the Judge has determined is not eligible for inclusion in the CVE database. If the contracting officer has already made an award under paragraph (h) of this section, the contracting officer shall either terminate the contract or not exercise the next option.

(3) The contracting officer must update the Federal Procurement Data System and other procurement reporting databases to reflect the Judge's decision.

(4) If the Judge finds the protested concern ineligible for inclusion in the CVE database, D/CVE must immediately remove the protested concern from the CVE database.

(5) A concern found to be ineligible may not submit an offer on a future VA procurement until the protested concern reapplies to the Vendor Information Pages Verification Program and has been reentered into the CVE database.

§ 134.1008 Discovery.

Discovery will not be permitted in CVE Protest proceedings.

§ 134.1009 Oral hearings.

Oral hearings will be held in CVE Protest proceedings only upon a finding by the Judge of extraordinary circumstances. If such an oral hearing is ordered, the proceeding shall be conducted in accordance with those rules of subpart B of this part as the Judge deems appropriate.

§ 134.1010 Standard of review and burden of proof.

The protested concern has the burden of proving its eligibility, by a preponderance of the evidence.

§ 134.1011 Weight of evidence.

The Judge will give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions. In the case of refusal or failure to furnish requested information within a required time period, the Judge may assume that disclosure would be contrary to the interests of the party failing to make disclosure.

§ 134.1012 The record.

Where relevant, the provisions of § 134.225 apply. In a protest under this subpart, the contents of the record also include the case file or solicitation submitted to OHA in accordance with § 134.1007.

§ 134.1013 Request for Reconsideration.

The decision on a CVE Protest may not be appealed. However:

(a) The Judge may reconsider a CVE Protest decision. Any party that has appeared in the proceeding, or the Secretary of VA or his/her designee, may request reconsideration by filing with OHA and serving a petition for reconsideration on all the parties to the CVE Protest within twenty (20) calendar days after service of the written decision. The request for reconsideration must clearly show an error of fact or law material to the

decision. The Judge may also reconsider a decision on his or her own initiative.

(b) If the Judge reverses his or her initial decision on reconsideration, the contracting officer must follow § 134.1007(j) in applying the new decision's results.

■ 5. Add subpart K to read as follows:

Subpart K—Rules of Practice for Appeals of Denials and Cancellations of Verification for Inclusion in the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) Database (CVE Appeals)

Sec.

- 134.1101 Scope of rules.
- 134.1102 Who may file a CVE Appeal?
- 134.1103 Grounds for filing a CVE Appeal.
- 134.1104 Commencement of CVE Appeals.
- 134.1105 The appeal petition.
- 134.1106 Service and filing requirements.
- 134.1107 Transmission of the case file.
- 134.1108 Response to an appeal petition.
- 134.1109 Discovery and oral hearings.
- 134.1110 New evidence.
- 134.1111 Standard of review and burden of proof.
- 134.1112 The decision.

Authority: 38 U.S.C. 8127(f)(8)(A).

Subpart K—Rules of Practice for Appeals of Denials and Cancellations of Verification for Inclusion in the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) Database (CVE Appeals)

§ 134.1101 Scope of rules.

(a) The rules of practice in this subpart K apply to appeals of denials and cancellations of verification for inclusion in the U.S. Department of Veterans Affairs Center for Verification and Evaluation Database (CVE Appeals).

(b) Except where inconsistent with this subpart, the provisions of subparts A and B of this part apply to appeals listed in paragraph (a) of this section.

(c) Appeals relating to determinations made by SBA's Director, Office of Government Contracting regarding Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) status are governed by subpart E of this part.

(d) Protests of a concern's eligibility for inclusion in the VA's CVE database are governed by subpart J of this part.

§ 134.1102 Who may file a CVE Appeal?

A concern that has been denied verification of its CVE status or has had its CVE status cancelled may appeal the denial or cancellation to OHA.

§ 134.1103 Grounds for filing a CVE Appeal.

Denials and cancellations of verification of CVE status may be appealed to OHA, so long as the denial or cancellation is not based on the

failure to meet any veteran or service-disabled veteran eligibility criteria. Such denials and cancellations are final VA decisions and not subject to appeal to OHA.

§ 134.1104 Commencement of CVE Appeals.

(a) A concern whose application for CVE verification has been denied or whose CVE status has been cancelled must file its appeal within 10 business days of receipt of the denial or cancellation.

(b) The rule for counting days is in § 134.202(d).

(c) OHA will dismiss an untimely appeal.

§ 134.1105 The appeal petition.

(a) *Format.* CVE Appeals must be in writing. There is no required format for an appeal petition; however, it must include the following:

(1) A copy of the denial or cancellation and the date the appellant received it;

(2) A statement of why the cancellation or denial is in error;

(3) Any other pertinent information the Judge should consider; and

(4) The name, address, telephone number, and email address or facsimile number, if available, and signature of the appellant or its attorney.

(b) *Service.* The appellant must serve copies of the entire appeal petition upon the Director, Center for Verification and Evaluation (D/CVE) and VA Counsel at CVAppealsService@va.gov.

(c) *Certificate of Service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).

(d) *Dismissal.* An appeal petition that does not meet all the requirements of this section may be dismissed by the Judge at his/her own initiative or upon motion of a respondent.

§ 134.1106 Service and filing requirements.

The provisions of § 134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart.

§ 134.1107 Transmission of the case file.

Once a CVE Appeal is filed, the D/CVE must deliver to OHA the entire case file relating to the denial or cancellation. The Judge will issue a notice and order establishing the timetable for transmitting the case file to OHA. The D/CVE must certify and authenticate that the case file, to the best of his/her knowledge, is a true and correct copy of the case file.

§ 134.1108 Response to an appeal petition.

(a) *Who may respond.* The D/CVE or his/her designee or counsel for VA may respond to the CVE Appeal. The response should present arguments to the issues presented on appeal.

(b) *Time limits.* The notice and order will inform the parties of the filing of the appeal petition, establish the close of record as 15 days after service of the notice and order, and inform the parties that OHA must receive any responses to the appeal petition no later than the close of record.

(c) *Service.* The respondent must serve its response upon the appellant and upon each of the persons identified in the certificate of service attached to the appeal petition pursuant to § 134.1105.

(d) *Reply to a response.* No reply to a response will be permitted unless the Judge directs otherwise.

§ 134.1109 Discovery and oral hearings.

Discovery will not be permitted and oral hearings will not be held.

§ 134.1110 New evidence.

Except for good cause shown, evidence beyond the case file will not be admitted.

§ 134.1111 Standard of review and burden of proof.

The standard of review is whether the D/CVE denial or cancellation was based on clear error of fact or law. The appellant has the burden of proof, by a preponderance of the evidence.

§ 134.1112 The decision.

(a) *Timing.* The Judge shall decide a CVE Appeal, insofar as practicable, within 60 calendar days after close of the record.

(b) *Contents.* Following closure of the record, the Judge will issue a decision containing findings of fact and conclusions of law, reasons for such findings and conclusions, and any relief ordered.

(c) *Basis for decision.* Decisions under this part will be based primarily on the evidence in the CVE case file, arguments made on appeal, and any response(s) thereto. However, the Judge, in his/her sole discretion, may consider issues beyond those raised in the pleadings and the denial or cancellation letter.

(d) *Finality.* The decision is the final agency decision and becomes effective upon issuance. Where OHA dismisses an appeal of a D/CVE denial or cancellation, the D/CVE determination remains in effect.

(e) *Service.* OHA will serve a copy of all written decisions on each party, or, if represented by counsel, on its counsel.

(f) *Effect.* If the Judge grants the appeal and finds the appellant eligible for inclusion in the CVE database, the D/CVE must immediately reinstate or include the appellant, as the case may be, in the CVE database.

(g) *Reconsideration.* A decision of the Judge may be reconsidered. Any party that has appeared in the proceeding, or the Secretary of VA or his or her designee, may request reconsideration by filing with OHA and serving a petition for reconsideration on all parties to the CVE Appeal within twenty (20) calendar days after service of the written decision, upon a clear showing of an error of fact or law material to the decision. The Judge also may reconsider a decision on his or her own initiative.

Linda E. McMahon,
Administrator.

[FR Doc. 2017-20384 Filed 9-27-17; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2017-0650; Product Identifier 2017-NE-19-AD]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce plc 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 certain Rolls-Royce plc (RR) RB211-Trent 875-17, RB211-Trent 877-17, RB211-Trent 884-17, RB211-Trent 884B-17, RB211-Trent 892-17, RB211-Trent 892B-17, and RB211-Trent 895-17 turbofan engines. This proposed AD was prompted by low-pressure compressor (LPC) case A-frame hollow locating pins that may have reduced integrity due to incorrect heat treatment. This proposed AD would require replacement of the LPC case A-frame hollow locating pins. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this NPRM by October 30, 2017.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200

New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 202-493-2251.

For service information identified in this proposed AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011-44-1332-242424; fax: 011-44-1332-249936; email: http://www.rolls-royce.com/contact/civil_team.jsp; Internet: <https://customers.rolls-royce.com/public/rollsroycecare>. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

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-2017-0650; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The 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: Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7754; fax: 781-238-7199; email: robert.green@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2017-0650; Product Identifier 2017-NE-19-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to [http://](http://www.regulations.gov)

www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2017-0096, dated June 1, 2017 (referred to hereinafter as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

All low pressure compressor (LPC) case A-frame hollow locating pins, Part Number (P/N) FK11612, manufactured between 01 January 2012 and 31 May 2016, have potentially been subjected to incorrect heat treatment. This may have reduced the integrity of the pin such that in a Fan Blade Off (FBO) event it is unable to withstand the applied loads. This condition, if not corrected, could lead to loss of location of the A-frame following an FBO event, possibly resulting in engine separation, loss of thrust reverser unit, release of high-energy debris, or an uncontrolled fire. To address this potential unsafe condition, RR identified the affected engines that have these A-frame hollow locating pins installed and published Alert Non-Modification Service Bulletin (NMSB) RB.211-72-AJ463, providing instructions for replacement of these pins. The NMSB was recently revised to correct an error in Section 1.A., where ESN 51477 was inadvertently omitted. That ESN was correctly listed in Section 1.D.(1)(f) for the compliance time. For the reason described above, this AD requires a one-time replacement of the affected A-frame hollow locating pins P/N FK11612. This AD also prohibits installation of pins that were released to service before 05 July 2016.

You may obtain further information by examining the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0650.

Related Service Information Under 14 CFR Part 39

RR has issued Alert Non Modification Service Bulletin (NMSB) RB.211-72-AJ463, Revision 2, dated June 28, 2017. The Alert SB describes procedures for replacement of all non-conforming A-frame locating pins. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of the United Kingdom, and is approved for operation

in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all

information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require replacement of all non-conforming A-frame locating pins.

Costs of Compliance

We estimate that this proposed AD affects 95 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
A-frame pin replacement	9.5 work-hours × \$85 per hour = \$807.50	\$453.00	\$1,260.50	\$119,747.50

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 to the extent that it justifies making a regulatory distinction, 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):

Rolls-Royce plc: Docket No. FAA–2017–0650; Product Identifier 2017–NE–19–AD.

(a) Comments Due Date

We must receive comments by October 30, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to certain Rolls-Royce plc (RR) RB211–Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17 and 895–17 engines with an engine serial number (ESN) listed in Section 1.A., Effectivity, of RR Alert NMSB RB.211–72–AJ463, Revision 2, dated June 28, 2017.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Reason

This AD was prompted by low-pressure compressor (LPC) case A-frame hollow locating pins that may have reduced integrity due to incorrect heat treatment. We are issuing this AD to prevent failure of the locating pins, engine separation and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) At the next scheduled on-wing maintenance opportunity after the effective date of this AD, replace each affected LPC case A-frame hollow locating pin using Section 3, Accomplishment Instructions, of RR Alert NMSB RB.211–72–AJ463, Revision 2, dated June 28, 2017, within the compliance times listed in Section 1.D.(1), Planning Information, except for those listed in Sections 1.D.(1)(a) and (b) that have a compliance requirement of November 13, 2017.

(2) After the effective date of this AD, unless already accomplished by paragraph (g)(1) of this AD, at the next engine shop visit, replace each affected LPC case A-frame hollow locating pin, part number (P/N) FK11612, with a part eligible for installation, using Section 3, Accomplishment Instructions, of RR Alert NMSB RB.211–72–AJ463, Revision 2, dated June 28, 2017.

(h) Installation Prohibition

After the effective date of this AD, do not install any engine with an affected LPC case A-frame hollow locating pin, P/N FK11612, unless the pin is eligible for installation.

(i) Definitions

For the purposes of this AD:

(1) An affected part is an LPC case A-frame hollow locating pin, P/N FK11612, except those with an original RR authorized release certificate dated July 5, 2016, or later.

(2) A part eligible for installation is an LPC case A-frame hollow locating pin, P/N FK11612, with an original RR authorized release certificate dated July 5, 2016, or later.

(3) An engine shop visit is when the engine is subject to a serviceability check and repair, rebuild, or overhaul.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ECO Branch, send it to the attention of the person identified in paragraph (k)(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.

(k) Related Information

(1) For more information about this AD, contact Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7754; fax: 781-238-7199; email: robert.green@faa.gov.

(2) Refer to MCAI European Aviation Safety Agency AD 2017-0096, dated June 1, 2017, for more information. You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA-2017-0650.

(3) Rolls-Royce plc Alert Non Modification Service Bulletin RB.211-72-AJ463, Revision 2, dated June 28, 2017, can be obtained from RR plc, using the contact information in paragraph (k)(4) of this proposed AD.

(4) For service information identified in this proposed AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011-44-1332-242424; fax: 011-44-1332-249936; email: http://www.rolls-royce.com/contact/civil_team.jsp; Internet: <https://customers.rolls-royce.com/public/rollsroycecare>.

(5) You may view this service information at the FAA, Engine & 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 22, 2017.

Robert J. Ganley,

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

[FR Doc. 2017-20718 Filed 9-27-17; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 778 and 773

Federal Railroad Administration

49 CFR Part 264

Federal Transit Administration

49 CFR Part 622

[Docket No. FHWA-2016-0037]

FHWA RIN 2125-AF73; FRA RIN 2130-AC66; FTA RIN 2132-AB32

Program for Eliminating Duplication of Environmental Reviews

AGENCY: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This NPRM provides interested parties with the opportunity to comment on proposed regulations governing the U.S. Department of Transportation's (DOT) Program for Eliminating Duplication of Environmental Reviews (Program) established by Section 1309 of the Fixing America's Surface Transportation Act (FAST Act). Section 1309 directed the U.S. Secretary of Transportation (Secretary) to establish a pilot program authorizing up to five States to conduct environmental reviews and make approvals for projects under State environmental laws and regulations instead of the National Environmental Policy Act (NEPA). The FAST Act requires the Secretary, in consultation with the Chair of the Council on Environmental Quality (CEQ), to promulgate regulations to implement the requirements of the Program, including application requirements and criteria necessary to determine whether State laws and regulations are at least as stringent as the applicable Federal law. The FHWA, FRA, and FTA, hereinafter referred to as "the Agencies," are proposing these regulations on behalf of the Secretary and seek comments on the proposals contained in this NPRM. This rule would also implement a provision in Section 1308 of the FAST Act that amends the corrective action period that the Agencies must provide to a State participating in the Surface Transportation Project Delivery Program (Section 327 Program).

DATES: Comments must be received on or before November 27, 2017.

ADDRESSES: You may submit comments, identified by the document number at the top of this document, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor Room W12-140, Washington, DC 20590.
- *Hand Delivery/Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE., between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For FHWA, James Gavin, Office of Project Development and Environmental Review, (202) 366-1473, or Diane Mobley, Office of Chief Counsel, (202) 366-1366. For FRA, Michael Johnsen, Office of Railroad Policy and Development, (202) 493-1310, or Chris Van Nostrand, Office of Chief Counsel, (202) 493-6058. For FTA, Megan Blum, Office of Planning and Environment, (202) 366-0463, or Helen Serassio, Office of Chief Counsel, (202) 366-1974. The Agencies are located at 1200 New Jersey Ave. SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 2015, President Obama signed into law the FAST Act (Pub. L. 114-94, 129 Stat. 1312), which contains new requirements related to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). Section 1309 of the FAST Act, codified at 23 U.S.C. 330, established a pilot program that allows the Secretary to approve up to five States to use one or more State environmental laws instead of NEPA for environmental review of surface transportation projects. In order to be eligible to participate in the Program, a State must have assumed the Secretary's responsibilities for environmental

reviews under 23 U.S.C. 327. To participate in the Program, a State must submit an application and enter into an agreement with DOT.

Section 1308(5) of the FAST Act amended the 23 U.S.C. 327(j) termination procedures for the Section 327 Program by: (1) Changing the number of days for corrective action the Agencies must provide to the State from 30 days to not less than 120 calendar days, and 2) upon the request of the Governor of the State, requiring the Agencies provide a detailed description of each responsibility in need of corrective action.

Under Section 1309 of the FAST Act (23 U.S.C. 330), DOT, in consultation with the Chair of CEQ, must promulgate regulations implementing the requirements of that provision. The proposed regulations would establish the Program, specify the information that applicants must submit to participate in the Program, and define the criteria the Agencies, in consultation with the Office of the Secretary and with the concurrence of the Chair of CEQ, will use to determine whether a State law or regulation is as stringent as the Federal requirements under NEPA, the procedures implementing NEPA, and NEPA-related regulations and Executive Orders. This NPRM proposes regulations establishing the Program and requests the public's comments.

Section-by-Section Discussion of the Proposals

23 CFR Part 778—Pilot Program for Eliminating Duplication of Environmental Reviews

The Agencies propose a title to this part that clearly describes the Program's scope.

Section 778.101 Purpose

The Agencies propose a section to explain the purpose of the Program.

Section 778.103 Eligibility and Certain Limitations

The Agencies propose a section describing the Program's eligibility requirements and the limitations of a State's participation.

This section proposes four requirements necessary for a State to participate in the Program. First, a State must act through the Governor or top-ranking State transportation official who is charged with responsibility for highway construction. Second, a State must expressly consent to the exclusive jurisdiction of the U.S. District Courts for compliance, discharge, and enforcement of any responsibility under this Program. Third, a State must have

assumed the responsibilities of the Secretary under 23 U.S.C. 327. Fourth, a State must have laws in effect authorizing the State to take the actions necessary to carry out the alternative environmental review and approval procedures under State laws and regulations.

Section 778.103 identifies two conditions governing a State's participation in the Program. First, State environmental laws and regulations may only be substituted as a means for complying with NEPA, procedures governing the implementation of NEPA, and related regulations and Executive Orders. Second, compliance with State environmental laws and regulations does not substitute for compliance with any other applicable Federal environmental requirements.

Section 778.105 Application Requirements for Participation in the Program

The Agencies propose a section describing the required content of an eligible State's application to participate in the Program.

To participate in the Program, any eligible State would submit an application that includes:

(1) A full and complete description of the alternative environmental review and approval procedures the State proposes to use, including (i) the procedures the State uses to engage the public and consider alternatives to the proposed action; and (ii) the extent to which the State considers environmental consequences or impacts on resources potentially impacted by the proposed actions (40 CFR 1508.7 and 1508.8).

(2) Identification of each Federal environmental requirement the State is seeking to substitute, within the limitations of this section;

(3) Identification of each State environmental law and regulation that the State intends to substitute for a Federal environmental requirement, within the limitations of this section;

(4) A detailed explanation of how the State environmental law and regulation intended to substitute for a Federal environmental requirement is at least as stringent as the Federal requirement;

(5) A detailed description of the projects or classes of transportation projects for which the State anticipates exercising the authority that may be granted under the Program;

(6) Verification that the State has the financial and personnel resources necessary to carry out the Program;

(7) Evidence that the State has sought public comments on its application

prior to its submittal and the State's response to any comments it received;

(8) A point of contact for questions regarding the application and a point of contact regarding potential implementation of the Program (if different);

(9) Certification and explanation by the State's Attorney General or other State official legally empowered by State law to issue legal opinions that bind the State that the State has legal authority to enter into the Program, and that the State consents to exclusive Federal court jurisdiction for the compliance, discharge, and enforcement of any responsibility under this Program;

(10) Certification by the State's Attorney General or other State official legally empowered by State law to issue legal opinions that bind the State that the State has laws that are comparable to the Freedom of Information Act (FOIA), 5 U.S.C. 552, including providing that any decision regarding the public availability of a document under those laws is reviewable by a court of competent jurisdiction; and

(11) The State Governor's (or in the case of the District of Columbia, the Mayor's) or the State's top ranking transportation official's signature approving the application.

Section 778.107 Application Review and Approval

The Agencies propose a section establishing the review and approval process for a State's application to the Program.

To begin the review and approval process, the applicable Operating Administration also would solicit public comments on a State's complete application and would consider comments before making a decision on the application. In addition to the State's application, the Operating Administration may provide other documents for public review such as a draft of the proposed agreement. After receiving a complete application, the Operating Administration would have 120 calendar days to make a decision on the State's application. The Operating Administration would transmit the decision to the applicant, with an explanation in writing.

In making the decision, the Operating Administration would approve a State's application only if:

(1) That State is party to an agreement with the Operating Administration under 23 U.S.C. 327;

(2) The Operating Administration has determined, after considering any public comments received, the State has the capacity, including financial and

personnel, to undertake the alternative environmental review and approval procedures; and

(3) The Operating Administration, in consultation with the Office of the Secretary, with the concurrence of the Chair of CEQ, and after considering public comments received, has determined the State laws or regulations described in the State's application are at least as stringent as the Federal requirements they substitute.

Before the Operating Administration approves the application, the State must enter into a written agreement with the Operating Administration. At a minimum the written agreement must:

(1) Be executed by the Governor or top-ranking transportation official in the State charged with responsibility for highway construction;

(2) Provide that the State agrees to assume the responsibilities of the Program, as identified by the Operating Administration;

(3) Provide that the State expressly consents to accept Federal court jurisdiction for the compliance, discharge, or enforcement of any responsibility it undertakes for the Program;

(4) Certify that State laws or regulations exist that authorize the State to carry out the responsibilities of the Program;

(5) Certify that State laws or regulations exist that are comparable to FOIA (5 U.S.C. 552), including a provision that any decision regarding the public availability of a document under the State laws or regulations is reviewable by a Court of competent jurisdiction;

(6) Commit the State to maintain the personnel and financial resources necessary to carry out its responsibilities under the Program;

(7) Have a term of not more than 5 years, the term of a State's agreement with the Operating Administration in accordance with 23 U.S.C. 327, or a term ending on December 4, 2027, whichever is sooner; and

(8) Be renewable.

The Operating Administration's execution of the Agreement would constitute approval of the application. A State approved to participate in the Program may further apply the approved alternative environmental review and approval procedures to locally administered projects for up to 25 local governments at the request of those local governments. For such locally administered projects, the State would be responsible for ensuring that the requirements of the approved alternative State procedures are met.

Section 778.109 Criteria for Determining Stringency

After consultation with the Agencies, CEQ identified criteria the Agencies would use to determine whether the State laws or regulations are at least as stringent as the Federal NEPA requirements. These criteria provide for protection of the environment, provide opportunity for public participation and comment (including access to the documentation necessary to review the potential impact of a project), and ensure consistent review of projects that would otherwise have been covered under NEPA. The legislative and regulatory citations noted are intended to indicate, in general, the basis for the criteria. Based on CEQ's criteria, the Agencies and CEQ propose that to be considered at least as stringent as the Federal NEPA requirements, a State environmental law or regulation, at a minimum, must:

(a) Define the types of actions that normally require an environmental impact assessment, including government-sponsored projects such as those receiving Federal financial assistance or permit approvals. (42 U.S.C. 4332(2)(C); 40 CFR 1508.18);

(b) Ensure an early process for determining the scope of the action and issues that need to be addressed, identifying the significant issues, and for the classification of the appropriate environmental impact assessment in accordance with the significance of the likely impacts. For actions that may result in significant impacts on the human environment the scoping process should be an open and public process. (23 U.S.C. 139(e); 40 CFR 1501.3, 1501.4, 1501.7, 1507.3(b), 1508.14, and 1508.25);

(c) Prohibit agencies and non-governmental proponents from taking action concerning the proposal until the environmental impact evaluation is complete when such action would (1) have adverse environmental impacts or (2) limit the choice of reasonable alternatives. (40 CFR 1506.1 and 1506.10(b)).

(d) Protect the integrity and objectivity of the analysis by requiring the agency to take responsibility for the scope and content of the analysis and by preventing conflicts of interest among the parties developing the analysis and the parties with financial or other interest in the outcome of the project. (42 U.S.C. 4332(2)(D); 40 CFR 1506.5);

(e) Based on a proposed action's purpose and need, require objective evaluation of reasonable alternatives to the proposed action (including the alternative of not taking the action) if it

may result in significant impacts to the human environment or, for those actions that may not result in significant impacts, consideration of alternatives if they will involve unresolved conflicts concerning alternative uses of available resources (42 U.S.C. 4332(2)(C)(iii); 42 U.S.C. 4332(2)(E); 23 U.S.C. 330(b)(1)(A); 40 CFR 1502.13, 1502.14, and 1508.9);

(f) Require an assessment of the reasonably foreseeable direct, indirect, and cumulative impacts of a proposed action (and any reasonable alternatives) on the human environment, and a comparison of those potential impacts with existing environmental conditions (42 U.S.C. 4332(2)(C); 23 U.S.C. 330(b)(1)(B); 40 CFR 1502.16, 1508.9(b), and 1508.4);

(g) Require the consideration of appropriate mitigation for the impacts associated with a proposal and reasonable alternatives (including avoiding, minimizing, rectifying, reducing or eliminating the impact over time, and compensating for the impact) (40 CFR 1502.14(f), 1502.16(h), and 1508.20);

(h) Provide for adequate interagency participation, including appropriate coordination and consultation with State, Federal, tribal, and local agencies with jurisdiction by law, special expertise, or an interest with respect to any environmental impact associated with the proposal, and for collaboration that would eliminate duplication of reviews. For actions that may result in significant impacts to the human environment, the process should allow for the development of plans for interagency coordination and public involvement, and the setting of timetables for the review process (42 U.S.C. 4332(2)(C); 23 U.S.C. 139(d) and 139(g); 40 CFR 1500.5(e), 1501.6, 1502.25, and part 1503);

(i) Provide an opportunity for public participation and comment that is commensurate with the significance of the proposal's impacts on the human environment, and require public access to the documentation developed during the environmental review and a process to respond to public comments. (42 U.S.C. 4332(2)(C); 23 U.S.C. 330(b)(1)(A); FAST Act, Sec. 1309(c)(2)(B)(ii); 40 CFR 1502.19, part 1503, and 1506.6; and E.O. 11514, Sec. 1(b));

(j) Include procedures for the elevation and resolution of interagency disputes prior to a final decision on the proposed project. (23 U.S.C. 139(h); 40 CFR part 1504);

(k) Require, for the conclusion of the process, a concise documentation of findings (for actions that would not

likely result in significant impacts to the human environment) or, for actions that may result in significant impacts, a concise record that states the decision that: (i) Identifies all alternatives considered (specifying which were environmentally preferable); (ii) identifies and discusses all factors that were balanced by the agency in making its decision, and states how those considerations entered into the decision; (iii) states whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why they were not; and (iv) describes the monitoring and enforcement program that will be adopted where applicable for any mitigation (40 CFR 1501.4 and 1505.2);

(l) Require the agency to supplement environmental impacts assessments if there are substantial changes in the proposal that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (23 U.S.C. 330(e)(3); 40 CFR 1502.9); and

(m) Allow for the use of procedures that facilitate process efficiency such as the identification of categories of actions that do not individually or cumulatively have a significant impact on the human environment and which have been found to not have such effect with procedures that require the consideration of extraordinary circumstances that would warrant a higher level of analysis, the use of tiering, programmatic approaches, adoption, incorporation by reference, approaches to eliminate duplication with other Federal requirements, and special procedures to address emergency situations (23 U.S.C. 139(b)(3); 40 CFR 1502.20, 1502.21, 1502.25, 1506.2, 1506.3, 1506.4, 1507.3(b)(ii), and 1508.4).

Section 778.111 Review and Termination

The Agencies propose a section describing the termination date of the Program, the Operating Administration's responsibilities to review each approved State's performance implementing the Program, and the Operating Administration's right to terminate a State's participation in the Program early.

Under FAST Act Section 1309, the Program will terminate 12 years after enactment (December 4, 2027). Until then, the Operating Administration would review each participating State's performance, at least once every 5 years. The Operating Administration would provide public notice and an

opportunity for public comment on the review. At the conclusion of the Operating Administration's last review before the expiration of the term, the Operating Administration may extend a State's participation in the Program for an additional term not to exceed 5 years (if this extension ends before December 4, 2027) or it may terminate the State's participation in the Program.

Finally, the Operating Administration could terminate a State's participation in the Program if the Operating Administration, in consultation with the Office of the Secretary and the Chair of CEQ, determines a participating State's performance fails to meet the terms of the written agreement, the requirements of 23 CFR part 778, or 23 U.S.C. 330. Before terminating the State's participation, the Operating Administration would first notify the State and allow 90 days for the State to take corrective action. If the State fails to take corrective action during this time, the Operating Administration may then terminate that State's participation in the Program.

23 CFR Part 773—Surface Transportation Project Delivery Program Application Requirements and Termination

The Agencies propose to revise section 773.117(a)(2) by modifying the current termination time period language to state that the Operating Administration(s) must provide the State no less than 120 days to take corrective actions.

The Agencies propose to add a new section 773.117(a)(3) to include that on the request of the Governor of the State, the Operating Administration(s) shall provide a detailed description of each responsibility in need of corrective action regarding an inadequacy identified by the Operating Administration.

49 CFR Part 264—Program for Eliminating Duplication of Environmental Reviews and the Surface Transportation Project Delivery Program

The Agencies propose to revise the heading for 49 CFR part 264 and add a reference to 23 U.S.C. 330 and the Program application procedures in 23 CFR part 778 as applicable to rail projects. This cross-reference would assist potential FRA applicants, State and Federal agencies, and the public.

49 CFR Part 622—Environmental Impact and Related Procedures

The Agencies propose to revise the authorities in subpart A—Environmental Procedures to include a reference to 23 U.S.C. 330 and the

application procedures in 23 CFR part 778 as applicable to transit projects. This cross-reference would assist potential FTA applicants, State and Federal agencies, and the public.

Statutory/Legal Authority for This Rulemaking

The Agencies have the authority for this rulemaking action under 49 U.S.C. 322(a), which provides authority to “[a]n officer of the Department of Transportation [to] prescribe regulations to carry out the duties and powers of the officer.” The Secretary delegated this authority to the Agencies’ Administrators in 49 CFR 1.81(a)(3), which provides that the authority to prescribe regulations contained in 49 U.S.C. 322(a) is delegated to each Administrator “with respect to statutory provisions for which authority is delegated by other sections in [49 CFR part 1].”

Rulemaking Analyses and Notices

The Agencies will consider all comments received before the close of business on the comment closing date indicated above and will make such comments available for examination in the docket at the above *regulations.gov* address. The Agencies will file comments received after the comment closing date and consider them to the extent practicable. In addition to late comments, the Agencies will also continue to file relevant information in the docket as it becomes available after the comment period closing date. Interested persons should continue to examine the docket for new material. The Agencies may publish a final rule at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), and DOT Regulatory Policies and Procedures

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Agencies have determined preliminarily that this action would not be a significant regulatory action under section 3(f) of Executive Order 12866 and would not be significant within the meaning of DOT's regulatory policies and procedures (44 FR 11032). This

proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Agencies anticipate that the economic impact of this rulemaking would be minimal. The Agencies do not have specific data to assess the monetary value of the benefits from the proposed changes because such data does not exist and would be difficult to develop.

This proposed rulemaking would not adversely affect, in any material way, any sector of the economy. This proposed rulemaking sets forth application requirements for the Program, which will result in only minimal costs to Program applicants. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the Agencies have evaluated the effects of this proposed rule on small entities and anticipate that this action would not have a significant economic impact on a substantial number of small entities. “Small entities” include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. The proposed rule addresses application requirements for States wishing to participate in the Program. As such, it affects only States, and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the Regulatory Flexibility Act does not apply, and the Agencies certify that this action would not have significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the

private sector, of \$155 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the Agencies will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector. Additionally, the definition of “Federal Mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the Program in accordance with changes made in the Program by the Federal Government.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to ensure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. The Agencies analyzed this proposed action in accordance with the principles and criteria contained in Executive Order 13132 and determined that it would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The Agencies have also determined that this proposed action would not preempt any State law or State regulation or affect the States’ ability to discharge traditional State governmental functions. The Agencies invite State and local governments with an interest in this rulemaking to comment on the effect that adoption of specific proposals may have on State or local governments.

Executive Order 13175 (Tribal Consultation)

The Agencies have analyzed this action under Executive Order 13175, and believe that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The Agencies have analyzed this action under Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. The Agencies have

determined that this action is not a significant energy action under Executive Order 13211 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

The DOT’s regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities (49 CFR part 17) apply to this program. Accordingly, the Agencies solicit comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The Agencies have determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, *Civil Justice Reform*, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 12898 (Environmental Justice)

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, and DOT Order 5610.2(a), 77 FR 27534 (May 10, 2012), require DOT agencies to achieve environmental justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations in the United States. The DOT Order requires DOT agencies to address compliance with the Executive Order and the DOT Order in all rulemaking activities. In addition, FHWA and FTA have issued additional documents relating to administration of the Executive Order and the DOT Order. On June 14, 2012, the FHWA issued an update to its EJ order, FHWA Order 6640.23A, *FHWA Actions to Address*

Environmental Justice in Minority Populations and Low-Income Populations. FTA also issued an update to its EJ policy, *FTA Policy Guidance for Federal Transit Recipients*, 77 FR 42077 (July 17, 2012).

The Agencies have evaluated this proposed rule under the Executive Order, the DOT Order, the FHWA Order, and the FTA Policy Guidance. The Agencies have determined that the proposed application regulations, if finalized, would not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations. States participating in the Program must comply with DOT's and the appropriate Agency guidance and policies on environmental justice.

Executive Order 13045 (Protection of Children)

The Agencies have analyzed this action under Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks*. The Agencies certify that this action would not be an economically significant rule and would not cause an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The Agencies do not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*.

National Environmental Policy Act

Agencies are required to adopt implementing procedures for NEPA that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an EIS; those that normally require preparation of an EA; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This proposed action qualifies for categorical exclusions under 23 CFR 771.117(c)(20) (promulgation of rules, regulations, and directives) and 771.117(c)(1) (activities that do not lead directly to construction) for FHWA, and 23 CFR 771.118(c)(4) (planning and administrative activities which do not involve or lead directly to construction) for FTA. In addition, FRA has determined that this proposed action is not a major FRA action requiring the preparation of an environmental impact statement or environmental assessment under FRA's

Procedures for Considering Environmental Impacts (64 FR 28545, May 26, 1999, as amended by 78 FR 2713, Jan. 14, 2013). The Agencies have evaluated whether the proposed action would involve unusual or extraordinary circumstances and have determined that this proposed action would not involve such circumstances.

Under the Program, a selected State may conduct environmental reviews and make approvals for projects under State environmental laws and regulations instead of NEPA. These State environmental laws and regulations must be at least as stringent as the Federal requirements. As a result, the Agencies find that this proposed rulemaking would not result in significant impacts on the human environment.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 778

Environmental protection, Eliminating duplication of environmental reviews pilot program, Highways and roads.

23 CFR Part 773

Environmental protection, Surface transportation project delivery program application requirements and termination, Highways and roads.

49 CFR Part 264

Environmental protection, Eliminating duplication of environmental reviews pilot program, Railroads.

49 CFR Part 622

Environmental protection, Environmental impact and related procedures, Public transportation, Transit.

Brandye L. Hendrickson,

Acting Administrator, Federal Highway Administration.

Heath Hall,

Acting Administrator, Federal Railroad Administration.

Jane Williams,

Acting Administrator, Federal Transit Administration.

For the reasons discussed in the preamble, the Agencies propose to amend 23 CFR chapter I and 49 CFR chapters II and VI as follows:

Title 23—Highways

PART 773—SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM APPLICATION REQUIREMENTS AND TERMINATION

- 1. The authority citation for part 773 continues to read as follows:

Authority: 23 U.S.C. 315 and 327; 49 CFR 1.81(a)(4)–(6); 49 CFR 1.85.

- 2. Amend § 773.117 by revising paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

(a) * * *

(2) The Operating Administration(s) may not terminate a State's participation without providing the State with notification of the noncompliance issue that could give rise to the termination, and without affording the State an opportunity to take corrective action to address the noncompliance issue. The Operating Administration(s) must provide the State a period of no less than 120 days to take corrective actions. The Operating Administration(s) is responsible for making the final decision on whether the corrective action is satisfactory.

(3) On the request of the Governor of the State, the Operating Administration(s) shall provide a detailed description of each responsibility in need of corrective action regarding an inadequacy identified by the Operating Administration(s).

* * * * *

- 3. Add part 778 to read as follows:

PART 778—PILOT PROGRAM FOR ELIMINATING DUPLICATION OF ENVIRONMENTAL REVIEWS

Sec.

778.101 Purpose.
778.103 Eligibility and Certain Limitations.
778.105 Application requirements for participation in the program.
778.107 Application review and approval.
778.109 Criteria for Determining Stringency.
778.111 Review and Termination.

Authority: 23 U.S.C. 330; 49 CFR 1.81.

§ 778.101 Purpose.

The purpose of this part is to establish the requirements for a State to participate in the pilot program for eliminating duplication of environmental reviews ("Program") under 23 U.S.C. 330. This Program allows States to conduct environmental reviews and make approvals for projects

under State environmental laws and regulations instead of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

§ 778.103 Eligibility and Certain Limitations.

(a) *Applicants.* To be eligible for the Program, a State must:

(1) Act by and through the Governor or top-ranking State transportation official who is charged with responsibility for highway construction;

(2) Expressly consent to the exclusive jurisdiction of U.S. District Courts for compliance, discharge, and enforcement of any responsibility under this Program;

(3) Have previously assumed the responsibilities of the Secretary under 23 U.S.C. 327 related to environmental review, consultation, or other actions required under certain Federal environmental laws; and

(4) Identify laws authorizing the State to take the actions necessary to carry out the equivalent environmental review and approval procedures under State laws and regulations.

(b) *Certain Limitations.* (1) State environmental laws and regulations may only be substituted as a means of complying with:

(i) NEPA;

(ii) Procedures governing the implementation of NEPA and related procedural laws under the authority of the Secretary, including 23 U.S.C. 109, 128, and 139; and

(iii) Related regulations and Executive Orders.

(2) Compliance with State environmental laws and regulations may not serve as a substitute for the Secretary's responsibilities regarding compliance with any other Federal environmental laws.

§ 778.105 Application requirements for participation in the Program.

(a) To apply to participate in the Program, a State must submit an application to the Federal Highway Administration, Federal Railroad Administration, or Federal Transit Administration, as appropriate.

(b) Each application submitted must contain the following information:

(1) A full and complete description of the alternative environmental review and approval procedures the State proposes, including:

(i) The procedures the State uses to engage the public and consider alternatives to the proposed action; and

(ii) The extent to which the State considers environmental consequences or impacts on resources potentially impacted by the proposed actions (such as air, water, or species).

(2) Each Federal environmental requirement the State is seeking to substitute, within the limitations of § 778.103(b);

(3) Each State environmental law and regulation the State intends to substitute for a Federal environmental requirement, within the limitations of § 778.103(b);

(4) A detailed explanation (with supporting documentation incorporated by reference) of the basis for concluding the State environmental law or regulation intended to substitute for a Federal environmental requirement is at least as stringent as that Federal requirement;

(5) A description of the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the Program;

(6) Verification that the State has the financial and personnel resources necessary to fulfill its obligations under the Program;

(7) Evidence that the State has sought public comments on its application prior to the submittal and the State's response to any comments it received;

(8) A point of contact for questions regarding the application and a point of contact regarding potential implementation of the Program (if different);

(9) Certification and explanation by the State's Attorney General or other State official legally empowered by State law to issue legal opinions that bind the State that the State has legal authority to enter into the Program, and that the State consents to exclusive Federal court jurisdiction for the compliance, discharge, and enforcement of any responsibility under this Program;

(10) Certification by the State's Attorney General or other State official legally empowered by State law to issue legal opinions that bind the State that the State has laws that are comparable to the Freedom of Information Act, 5 U.S.C. 552 (FOIA), including laws that allow for any decision regarding the public availability of a document under those laws to be reviewed by a court of competent jurisdiction; and

(11) The State Governor's (or in the case of the District of Columbia, the Mayor's) or the State's top ranking transportation official's signature approving the application.

§ 778.107 Application review and approval.

(a) The Operating Administration must solicit public comments on the application and must consider comments received before making a decision to approve or disapprove the application. Materials made available

for this public review must include the State's application and may include additional supporting materials.

(b) After receiving an application Operating Administration deems complete, the Operating Administration must make a decision on whether to approve or disapprove the application within 120 calendar days. The Operating Administration must transmit the decision in writing to the State with a statement explaining the decision.

(c) The Operating Administration will approve an application only if it determines the following conditions are satisfied:

(1) The State is party to an agreement with the Operating Administration under 23 U.S.C. 327;

(2) The Operating Administration has determined, after considering any public comments received, the State has the capacity, including financial and personnel, to undertake the alternative environmental review and approval procedures; and

(3) The Operating Administration, in consultation with the Office of the Secretary with the concurrence of the Chair of CEQ, and after considering public comments received, has determined that the State environmental laws and regulations described in the State's application are at least as stringent as the Federal requirements for which they substitute.

(d) The State must enter into a written agreement with the Operating Administration.

(e) The written agreement must:

(1) Be executed by the Governor or top-ranking transportation official in the State charged with responsibility for highway construction;

(2) Provide that the State agrees to assume the responsibilities of the Program, as identified by the Operating Administration;

(3) Provide that the State expressly consents to accept Federal court jurisdiction for the compliance, discharge, or enforcement of any responsibility undertaken as part of the Program;

(4) Certify that State laws and regulations exist that authorize the State to carry out the responsibilities of the Program;

(5) Certify that State laws and regulations exist that are comparable to FOIA (5 U.S.C. 552), including a provision that any decision regarding the public availability of a document under the State laws and regulations is reviewable by a court of competent jurisdiction;

(6) Contain a commitment that the State will maintain the personnel and financial resources necessary to carry

out its responsibilities under the Program;

(7) Have a term of not more than 5 years, the term of a State's agreement with the Operating Administration in accordance with 23 U.S.C. 327, or a term ending on December 4, 2027, whichever is sooner; and

(8) Be renewable.

(f) The State must execute the agreement before the Operating Administration executes the agreement and approves the application. The Operating Administration's execution of the agreement will constitute approval of the application.

(g) The agreement may be renewed at the end of its term, but may not extend beyond December 4, 2027.

(h) A State approved to participate in the Program may further apply the approved alternative environmental review and approval procedures to locally administered projects, for up to 25 local governments at the request of those local governments. For such locally administered projects, the State shall be responsible for ensuring that the requirements of the approved alternative State procedures are met.

§ 778.109 Criteria for Determining Stringency

To be considered at least as stringent as a Federal requirement under this Program, the State laws and regulations, must, at a minimum:

(a) Define the types of actions that normally require an environmental impact assessment, including government-sponsored projects such as those receiving Federal financial assistance or permit approvals. (42 U.S.C. 4332(2)(C); 40 CFR 1508.18);

(b) Ensure an early process for determining the scope of the action and issues that need to be addressed, identifying the significant issues, and for the classification of the appropriate environmental impact assessment in accordance with the significance of the likely impacts. For actions that may result in significant impacts on the human environment the scoping process should be an open and public process. (23 U.S.C. 139(e); 40 CFR 1501.3, 1501.4, 1501.7, 1507.3(b), 1508.14, and 1508.25);

(c) Prohibit agencies and non-governmental proponents from taking action concerning the proposal until the environmental impact evaluation is complete when such action would:

(1) Have adverse environmental impacts or

(2) Limit the choice of reasonable alternatives. (40 CFR 1506.1 and 1506.10(b)).

(d) Protect the integrity and objectivity of the analysis by requiring

the agency to take responsibility for the scope and content of the analysis and by preventing conflicts of interest among the parties developing the analysis and the parties with financial or other interest in the outcome of the project. (42 U.S.C. 4332(2)(D); 40 CFR 1506.5);

(e) Based on a proposed action's purpose and need, require objective evaluation of reasonable alternatives to the proposed action (including the alternative of not taking the action) if it may result in significant impacts to the human environment or, for those actions that may not result in significant impacts, consideration of alternatives if they will involve unresolved conflicts concerning alternative uses of available resources (42 U.S.C. 4332(2)(C)(iii); 42 U.S.C. 4332(2)(E); 23 U.S.C. 330(b)(1)(A); 40 CFR 1502.13, 1502.14, and 1508.9);

(f) Require an assessment of the reasonably foreseeable direct, indirect, and cumulative impacts of a proposed action (and any reasonable alternatives) on the human environment, and a comparison of those potential impacts with existing environmental conditions (42 U.S.C. 4332(2)(C); 23 U.S.C. 330(b)(1)(B); 40 CFR 1502.16, 1508.9(b), and 1508.4);

(g) Require the consideration of appropriate mitigation for the impacts associated with a proposal and reasonable alternatives (including avoiding, minimizing, rectifying, reducing or eliminating the impact over time, and compensating for the impact) (40 CFR 1502.14(f), 1502.16(h), and 1508.20);

(h) Provide for adequate interagency participation, including appropriate coordination and consultation with State, Federal, tribal, and local agencies with jurisdiction by law, special expertise, or an interest with respect to any environmental impact associated with the proposal, and for collaboration that would eliminate duplication of reviews For actions that may result in significant impacts to the human environment, the process should allow for the development of plans for interagency coordination and public involvement, and the setting of timetables for the review process (42 U.S.C. 4332(2)(C); 23 U.S.C. 139(d) and 139(g); 40 CFR 1500.5(e), 1501.6, 1502.25, and part 1503);

(i) Provide an opportunity for public participation and comment that is commensurate with the significance of the proposal's impacts on the human environment, and require public access to the documentation developed during the environmental review and a process to respond to public comments (42 U.S.C. 4332(2)(C); 23 U.S.C.

330(b)(1)(A); FAST Act, Sec. 1309(c)(2)(B)(ii); 40 CFR 1502.19, part 1503, and 1506.6; and E.O. 11514, Sec. 1(b));

(j) Include procedures for the elevation and resolution of interagency disputes prior to a final decision on the proposed project (23 U.S.C. 139(h); 40 CFR part 1504);

(k) Require, for the conclusion of the process, a concise documentation of findings (for actions that would not likely result in significant impacts to the human environment) or, for actions that may result in significant impacts, a concise record that states the agency decision that:

(i) Identifies all alternatives considered (specifying which were environmentally preferable),

(ii) Identifies and discusses all factors that were balanced by the agency in making its decision and states how those considerations entered into the decision,

(iii) States whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why they were not; and

(iv) Describes the monitoring and enforcement program that will be adopted where applicable for any mitigation (40 CFR 1501.4 and 1505.2).

(l) Require the agency to supplement environmental impact assessments if there are substantial changes in the proposal that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. (23 U.S.C. 330(e)(3); 40 CFR 1502.9); and

(m) Allow for the use of procedures that facilitate process efficiency such as the identification of categories of actions that do not individually or cumulatively have a significant impact on the human environment and which have been found to not have such effect with procedures that require the consideration of extraordinary circumstances that would warrant a higher level of analysis, the use of tiering, programmatic approaches, adoption, incorporation by reference, approaches to eliminate duplication with other Federal requirements, and special procedures to address emergency situations (23 U.S.C. 139(b)(3); 40 CFR 1502.20, 1502.21, 1502.25, 1506.2, 1506.3, 1506.4, 1507.3(b)(ii), and 1508.4).

§ 778.111 Review and Termination

(a) *In General.* The Program shall terminate December 4, 2027.

(b) *Review.* The Operating Administration must review each

participating State's performance in implementing the requirements of the Program at least once every 5 years.

(1) The Operating Administration must provide notice and an opportunity for public comment during the review.

(2) At the conclusion of its last review prior to the expiration of the term, the Operating Administration may extend a State's participation in the Program for an additional term of not more than 5 years (as long as such term does not extend beyond the termination date of the Program) or terminate the State's participation in the Program.

(c) *Early Termination.* (1) If the Operating Administration, in consultation with the Office of the Secretary and the Chair of CEQ, determines that a State is not administering the Program consistent with the terms of its written agreement, or the requirements of this part or 23 U.S.C. 330, the Operating Administration must provide the State notification of that determination.

(2) After notifying the State of its determination under paragraph (c)(1), the Operating Administration must provide the State a maximum of 90 days to take the appropriate corrective action. If the State fails to take such corrective action, the Operating Administration may terminate the State's participation in the Program.

Title 49—Transportation

PART 264—PROGRAM FOR ELIMINATING DUPLICATION OF ENVIRONMENTAL REVIEWS AND THE SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM

■ 4. The authority citation for part 264 is revised to read as follows:

Authority: 23 U.S.C. 327; 49 CFR 1.81; 23 U.S.C. 330.

■ 5. Revise the heading for part 264 to read as set forth above.

■ 6. Revise § 264.101 to read as follows:

§ 264.101 Procedures for complying with the surface transportation project delivery program application requirements and termination and the procedures for participating in and complying with the program for eliminating duplication of environmental reviews.

The procedures for complying with the surface transportation project delivery program application requirements and termination are set forth in part 773 of title 23 of the Code of Federal Regulations. The procedures for participating in and complying with the program for eliminating duplication of environmental reviews are set forth in part 778 of title 23 of the Code of Federal Regulations.

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 7. The authority citation for part 622 is revised to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303 and 5323(q); 23 U.S.C. 139, 326, 327, and 330; Pub. L. 109–59, 119 Stat. 1144, sections 6002 and 6010; 40 CFR parts 1500–1508; 49 CFR 1.81; Pub. L. 112–141, 126 Stat. 405, sections 1315, 1316, 1317, and 1318; and Pub. L. 114–94, section 1309.

■ 8. Revise § 622.101 to read as follows:

§ 622.101 Cross-reference to procedures.

The procedures for complying with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and related statutes, regulations, and orders are set forth in part 771 of title 23 of the Code of Federal Regulations. The procedures for complying with 49 U.S.C. 303, commonly known as “Section 4(f),” are set forth in part 774 of title 23 of the Code of Federal Regulations. The procedures for complying with the surface transportation project delivery program application requirements and termination are set forth in part 773 of title 23 of the Code of Federal Regulations. The procedures for participating and complying with the program for eliminating duplication of environmental reviews are set forth in part 778 of title 23 of the Code of Federal Regulations.

[FR Doc. 2017–20561 Filed 9–27–17; 8:45 am]

BILLING CODE 4910–22–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 547

RIN 3141–AA64

Technical Standards

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission proposes to amend the minimum technical standards for Class II gaming systems and equipment. The proposed rule would amend regulations that describe how tribal governments, tribal gaming regulatory authorities, and tribal gaming operations comply with the technical standards. In particular, the proposed rule amends the requirement that gaming systems manufactured before November 10, 2008, be modified to meet standards applicable to gaming systems manufactured on or after November 10, 2008, or be removed from the gaming

floor by November 10, 2018. The Commission proposes this action to assist tribal governments, tribal gaming regulatory authorities, and operations in ensuring the integrity and security of Class II games and gaming revenue through minimum technical standards for Class II gaming systems and equipment.

DATES: The agency must receive comments on or before November 13, 2017.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* 547.5_Comments@nigc.gov.
- *Fax:* 202–632–7066.
- *Mail:* National Indian Gaming Commission, 1849 C Street NW., MS 1621, Washington, DC 20240.
- *Hand Delivery:* National Indian Gaming Commission, 90 K Street NE., Suite 200, Washington, DC 20002, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Austin Badger, National Indian Gaming Commission; Telephone: 202–632–7003.

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

II. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands. On October 8, 2008, the NIGC published a final rule in the **Federal Register** called *Technical Standards for Electronic, Computer, or Other Technologic Aids Used in the Play of Class II Games*. 73 FR 60508. The rule added a new part to the NIGC's regulations establishing a process for ensuring the integrity of electronic Class II games and aids. The standards were designed to assist tribal gaming regulatory authorities and operators with ensuring the integrity and security of Class II gaming, the accountability of Class II gaming revenue, and provide guidance to equipment manufacturers

and distributors of Class II gaming systems. The standards do not classify which games are class II and which games are class III.

When implemented in 2008, the part 547 technical standards introduced several new requirements for Class II gaming systems designed to protect the security and integrity of Class II gaming systems and tribal operations. The Commission understood, however, that some existing Class II gaming systems might not meet all of the requirements of the technical standards. Therefore, to avoid any potentially significant economic and practical consequences of requiring immediate compliance, the Commission implemented a five year sunset provision which allowed eligible gaming systems manufactured before November 10, 2008 (2008 Systems) to remain on the gaming floor. The Commission believed that a five year period was sufficient for market forces to move equipment toward compliance with the standards applicable to gaming systems manufactured on or after November 10, 2008.

On September 21, 2012, the NIGC published a final rule in the **Federal Register** which included an amendment delaying the sunset provision by an additional five years. 77 FR 58473. The Commission recognized that its prior analysis regarding the continued economic viability of the 2008 Systems had proven to be mistaken. The NIGC established the initial five year period in the midst of a much stronger economy. In the time that followed the economic downturn, many tribal gaming operations set new priorities that required keeping a 2008 System on the gaming floor for a longer period of time. Balancing the economic needs against a risk that potentially increases as technology advances and 2008 Systems remain static, the Commission determined that 2008 Systems could continue to be offered for play until November 10, 2018.

Now, with the November 10, 2018, sunset approaching, the Commission believed it appropriate to include the 2008 Systems and associated sunset provision of the part 547 technical standards as a topic for consultation. The topic was therefore included in a November 22, 2016, letter to tribal leaders introducing the Commission's 2017 consultation series.

III. Development of the Proposed Rule

On March 23, 2017, in Tulsa, OK, and April 12, 2017, in San Diego, CA, the NIGC consulted on the 2008 Systems and associated sunset provision of part 547. The Commission also solicited written comments through May 31,

2017. In addition, NIGC staff attended several National Indian Gaming Association Class II Subcommittee meetings. The consultations and meetings, combined with the written comments, proved invaluable in the development of a discussion draft. On June 14, 2017, the Commission issued a discussion draft which, among other proposed amendments, proposed removing the November 10, 2018, sunset for 2008 Systems. Additional written comments responsive to the discussion draft were solicited through July 15, 2017.

Written comments received after the issuance of the discussion draft were generally supportive of the proposed removal of the November 10, 2018, sunset for 2008 Systems. Comments also indicated, however, several specific remaining areas of concern. The Commission developed the proposed rule after considering the comments received.

A. General Comments

Some commenters questioned the Commission's authority to implement technical standards and its authority to enforce the standards. IGRA gives the Commission the authority to adopt these technical standards. Congress was expressly concerned that gaming under IGRA be "conducted fairly and honestly by both the operator and players" and "to ensure that the Indian tribe is the primary beneficiary of the gaming operation." 25 U.S.C. 2702(2). The technical standards are designed to ensure that these concerns are addressed. These standards implement the authority granted the NIGC to monitor, inspect, and examine Class II gaming, 25 U.S.C. 2706(b)(1)–(4), and to promulgate such regulations as it deems appropriate to implement the provisions of IGRA. 25 U.S.C. 2706(b)(10). The Commission further reiterates that this rule does not classify games for purposes of IGRA. The rule assumes that the games played are Class II games. This rule establishes a process for ensuring the integrity and security of Class II games and an accounting of Class II revenue.

B. 2008 Systems, Pre-Discussion Draft

Many commenters requested that the November 10, 2018, sunset for 2008 Systems be removed. Commenters suggested that the existing sunset provision could not be justified because there has been no evidence that 2008 Systems represent a risk to the integrity and security of Class II gaming. Commenters noted that 2008 Systems appear to be protected by 26 out of 28 technical standards identified by

commenters as "high risk." In addition, commenters suggested that, even assuming additional risks are associated with 2008 Systems, such risks are mitigated by tribal gaming regulatory authorities (TGRAs) through internal control standards.

The Commission agrees that the 2008 sunset can be removed. The Commission disagrees, however, that evidence of risk forms the sole legal justification for the technical standards. The technical standards are intended to ensure the integrity and security of Class II gaming and the accountability of Class II gaming revenue. The technical standards include minimum requirements that the Commission believes, in its judgment, are appropriate and consistent with its Federal regulatory oversight mission. The Commission has, however, determined that removal of the sunset provision is justified provided that 2008 Systems are subject to additional annual review by TGRAs.

Commenters also suggested that the sunset provision threatens significant economic harm and the continued success and viability of the Class II gaming industry. Commenters suggested that the sunset provision is an unnecessary cost burden on manufacturers and tribes. Commenters further suggested that the sunset provision will cause tribes to lose leverage in compact negotiations with states.

The Commission understands the commenters' concerns over the economic impact of removing non-compliant Class II gaming systems from the gaming floor. The Commission notes, however, that part 547 as originally enacted and as amended only requires removal if the games are not made compliant with the testing standards for newer systems set forth in the regulation. The regulation initially provided the industry with five years to modify or replace 2008 Systems. The Commission subsequently granted an additional five years to bring the systems into compliance with the standards for newer systems. The Commission has now determined that removal of the sunset provision is justified provided that 2008 Systems are subject to additional annual review by the TGRA.

Commenters suggested that the sunset provision is retroactive and that IGRA does not authorize the NIGC to promulgate regulations that have retroactive effect. The Commission disagrees that the proposed amendments are retroactive. The proposed amendments do not alter the

legal consequences of actions completed before their effective date.

A commenter suggested extending the sunset provision indefinitely, subject to the authority of TGRAs. A commenter submitted proposed language implementing an annual audit requirement for 2008 Systems. The Commission's subsequent discussion draft partially incorporated this recommendation.

C. 2008 Systems, Post-Discussion Draft

The discussion draft required TGRAs to: "Annually review the Class II gaming system, its current components, and the associated testing laboratory reports to determine whether the Class II gaming system may be approved pursuant to paragraph (b) of this section. The TGRA shall make a finding identifying the Class II gaming systems reviewed, the Class II gaming systems subsequently approved pursuant to paragraph (b), and, for Class II gaming systems that cannot be approved pursuant to paragraph (b), the modifications necessary for such approval. The TGRA shall transmit its findings to the Commission within 120 days of the gaming operation's fiscal year end." Commenters suggested that the NIGC has provided no compelling reason to change the existing reporting requirements. Commenters further suggested that the annual reporting requirement appears to be unintentionally applicable to all Class II gaming systems.

Although the requirement does impose an additional requirement on TGRAs, the Commission believes that removal of the sunset provision warrants annual review specific to 2008 Systems. In addition, the annual reporting requirement is contained within § 547.5(a) and is therefore applicable only to 2008 Systems. The Commission has, however, revised and clarified the annual review and reporting procedures in the proposed rule to reduce the perceived burden on TGRAs. Pursuant to this proposed rule, TGRAs are not required to transmit its findings, but rather must maintain records and make them available to NIGC staff upon request.

The discussion draft further provided that "A TGRA may not permit the use of any Class II gaming system manufactured before November 10, 2008 in a tribal gaming operation unless: it meets requirements applicable to 2008 Systems. Discussion Draft § 547.5(a)(3) provides that "If the Class II gaming system is subsequently approved pursuant to paragraph (b) of this section, this paragraph (a) [2008 Systems] no longer applies." Commenters suggested

that the Discussion Draft could be misinterpreted to provide that all Class II gaming systems manufactured prior to November 10, 2008, including those that are now compliant with § 547.5(b), would be subject to the 2008 System provisions in § 547.5(a). Commenters further suggested that approving a 2008 System pursuant to § 547.5(b) requires a 2008 System to be resubmitted to a testing lab for full re-certification and/or requires TGRAs to make technical determinations.

The Commission believes that discussion draft § 547.5(a)(3) is clear that Class II gaming systems approved pursuant to § 547.5(b) are no longer 2008 Systems. The Commission has, however, clarified in the proposed rule that the use of the term "approved" is intended to reference TGRA approval based on review of existing testing lab reports for all current components of the Class II gaming system.

Finally, the discussion draft Discussion Draft § 547.5(a)(1)(viii) provides that "All player interfaces of the Class II gaming system have a date of manufacture before November 10, 2008." Commenters suggested that the requirement that all player interfaces of 2008 Systems have a date of manufacture before November 10, 2008, was a new requirement. Commenters further suggested that this requirement was unnecessary and would prevent use of newer player interfaces with 2008 Systems, contrary to provisions encouraging 2008 Systems to be modified to move towards compliance with standards for newer systems.

Although not included in the 2012 amendment to part 547, the date of manufacture requirement is not entirely new. The 2008 System provisions were originally intended to apply only to systems in play or manufactured by November 10, 2008. 73 FR 60508, 60510. Pursuant to the 2008 regulations, § 547.4(a)(7) required "the supplier of any player interface to designate with a permanently affixed label each player interface with an identifying number and the date of manufacture or a statement that the date of manufacture was on or before the effective date of this part. The tribal gaming regulatory authority shall also require the supplier to provide a written declaration or affidavit affirming that the date of manufacture was on or before November 10, 2008." 73 FR 60508, 60527 (October 10, 2008). The Commission agrees, however, that the date of manufacture requirement included in the discussion draft could be interpreted as preventing the use of newer player interfaces and has therefore removed the requirement from the proposed rule.

D. Class II Gaming System Component Repair, Replacement, or Modification

Discussion draft § 547.5(c)(2)(ii) provided that "The testing laboratory tests the submission to the standards established by: (A) This part; (B) Any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and (C) The TGRA." Commenters suggested that the new requirement that modifications to 2008 Systems be tested to the standards applicable to newer systems is unnecessary and will only result in additional costs with no practical benefit. Commenters noted that laboratory reports are currently not required for all modifications to 2008 Systems, thereby providing TGRAs with greater flexibility and control over such modifications. Commenters suggested that this provision will force TGRAs to use the emergency modification procedures to avoid testing delays.

The Commission disagrees that the requirement that all modifications be tested to the standards applicable to newer systems is unnecessary. The current and proposed regulations require the TGRA to determine, among other requirements, whether a modification will maintain or advance the Class II gaming system's compliance with the technical standards. The new requirement ensures that TGRAs are provided with the information needed for the TGRA to make such a determination. In addition, the Commission believes that TGRAs will continue to utilize the emergency modification provisions for their intended purpose.

E. Records

Discussion draft § 547.5(g) provided that "The Commission may use the information derived therefrom for any lawful purpose including, without limitation, to monitor the use of Class II gaming systems, to assess the effectiveness of the standards required by this Part, and to inform future amendments to this Part. The Commission will only make available for public review records or portions of records subject to release under the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; or the Indian Gaming Regulatory Act, 25 U.S.C. 2716(a)." Commenters expressed reluctance to expose sensitive testing and compliance records to possible public disclosure. Commenters suggested that records only be available for review on site by NIGC staff.

The Commission agrees that sensitive testing and compliance records should not be disclosed. As cited in the

discussion draft, 25 U.S.C. 2716(a) states that “the Commission shall preserve any and all information received pursuant to this chapter as confidential pursuant to” the confidential commercial or financial information and law enforcement information exceptions of the Freedom of Information Act. The Commission is therefore precluded from releasing such information.

Regulatory Matters

Regulatory Flexibility Act

The proposed rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the proposed rule does not constitute a major federal action significantly affecting the quality of the human

environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141–0007, which expired in August of 2011. The NIGC is in the process of reinstating that Control Number.

List of Subjects in 25 CFR Part 547

Gambling, Indian—lands, Indian—tribal government, Reporting and recordkeeping requirements.

Therefore, for reasons stated in the preamble, 25 CFR part 547 is proposed to be amended as follows:

PART 547—MINIMUM TECHNICAL STANDARDS FOR CLASS II GAMING SYSTEMS AND EQUIPMENT

■ 1. The authority citation for part 547 continues to read as follows:

Authority: 25 U.S.C. 2706(b).

■ 2. Revise § 547.5 to read as follows:

§ 547.5 How does a tribal government, TGRA, or tribal gaming operation comply with this part?

(a) *Gaming systems manufactured before November 10, 2008.* (1) Any Class II gaming system manufactured before November 10, 2008, that is not compliant with paragraph (b) of this section may be made available for use at any tribal gaming operation if:

(i) The Class II gaming system software that affects the play of the Class II game, together with the signature verification required by § 547.8(f) was submitted to a testing laboratory within 120 days after November 10, 2008, or October 22, 2012;

(ii) The testing laboratory tested the submission to the standards established by § 547.8(b), § 547.8(f), and § 547.14;

(iii) The testing laboratory provided the TGRA with a formal written report setting forth and certifying to the findings and conclusions of the test;

(iv) The TGRA made a finding, in the form of a certificate provided to the supplier or manufacturer of the Class II gaming system, that the Class II gaming system is compliant with § 547.8(b), § 547.8(f), and § 547.14;

(v) The Class II gaming system is only used as approved by the TGRA and the TGRA transmitted its notice of that approval, identifying the Class II gaming

system and its components, to the Commission;

(vi) Remote communications with the Class II gaming system are only allowed if authorized by the TGRA; and

(vii) Player interfaces of the Class II gaming system exhibit information consistent with § 547.7(d) and any other information required by the TGRA.

(2) For so long as a Class II gaming system is made available for use at any tribal gaming operation pursuant to this paragraph (a) the TGRA shall:

(i) Retain copies of the testing laboratory’s report, the TGRA’s compliance certificate, and the TGRA’s approval of the use of the Class II gaming system;

(ii) Maintain records identifying the Class II gaming system and its current components; and

(iii) Annually review the testing laboratory reports associated with the Class II gaming system and its current components to determine whether the Class II gaming system may be approved pursuant to paragraph (b)(1)(v) of this section. The TGRA shall make a finding identifying the Class II gaming systems reviewed, the Class II gaming systems subsequently approved pursuant to paragraph (b)(1)(v), and, for Class II gaming systems that cannot be approved pursuant to paragraph (b)(1)(v), the components of the Class II gaming system preventing such approval.

(3) If the Class II gaming system is subsequently approved by the TGRA pursuant to paragraph (b)(1)(v) as compliant with paragraph (b) of this section, this paragraph (a) no longer applies.

(b) *Gaming system submission, testing, and approval—generally.* (1) Except as provided in paragraph (a) of this section, a TGRA may not permit the use of any Class II gaming system in a tribal gaming operation unless:

(i) The Class II gaming system has been submitted to a testing laboratory;

(ii) The testing laboratory tests the submission to the standards established by:

(A) This part;

(B) Any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and

(C) The TGRA;

(iii) The testing laboratory provides a formal written report to the party making the submission, setting forth and certifying its findings and conclusions, and noting compliance with any standard established by the TGRA pursuant to paragraph (b)(1)(ii)(C) of this section;

(iv) The testing laboratory’s written report confirms that the operation of a player interface prototype has been

certified that it will not be compromised or affected by electrostatic discharge, liquid spills, electromagnetic interference, or any other tests required by the TGRA;

(v) Following receipt of the testing laboratory's report, the TGRA makes a finding that the Class II gaming system conforms to the standards established by:

(A) This part;

(B) Any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and

(C) The TGRA.

(2) For so long as a Class II gaming system is made available for use at any tribal gaming operation pursuant to this paragraph (b) the TGRA shall:

(i) Retain a copy of the testing laboratory's report; and

(ii) Maintain records identifying the Class II gaming system and its current components.

(c) *Class II gaming system component repair, replacement, or modification.* (1) As permitted by the TGRA, individual hardware or software components of a Class II gaming system may be repaired or replaced to ensure proper functioning, security, or integrity of the Class II gaming system.

(2) A TGRA may not permit the modification of any Class II gaming system in a tribal gaming operation unless:

(i) The Class II gaming system modification has been submitted to a testing laboratory;

(ii) The testing laboratory tests the submission to the standards established by:

(A) This part;

(B) Any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and

(C) The TGRA;

(iii) The testing laboratory provides a formal written report to the party making the submission, setting forth and certifying its findings and conclusions, and noting compliance with any standard established by the TGRA pursuant to paragraph (c)(2)(ii)(C) of this section;

(iv) Following receipt of the testing laboratory's report, the TGRA makes a finding that the:

(A) The modification will maintain or advance the Class II gaming system's compliance with this part and any applicable provisions of part 543 of this chapter; and

(B) The modification will not detract from, compromise or prejudice the proper functioning, security, or integrity of the Class II gaming system;

(3) If a TGRA authorizes a component modification under this paragraph, it

must maintain a record of the modification and a copy of the testing laboratory report so long as the Class II gaming system that is the subject of the modification remains available to the public for play.

(d) *Emergency Class II gaming system component modifications.* (1) A TGRA, in its discretion, may permit the modification of previously approved components to be made available for play without prior laboratory testing or review if the modified hardware or software is:

(i) Necessary to correct a problem affecting the fairness, security, or integrity of a game or accounting system or any cashless system, or voucher system; or

(ii) Unrelated to game play, an accounting system, a cashless system, or a voucher system.

(2) If a TGRA authorizes modified components to be made available for play or use without prior testing laboratory review, the TGRA must thereafter require the hardware or software manufacturer to:

(i) Immediately advise other users of the same components of the importance and availability of the update;

(ii) Immediately submit the new or modified components to a testing laboratory for testing and verification of compliance with this part and any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and

(iii) Immediately provide the TGRA with a software signature verification tool meeting the requirements of § 547.8(f) for any new or modified software component.

(3) If a TGRA authorizes a component modification under this paragraph, it must maintain a record of the modification and a copy of the testing laboratory report so long as the Class II gaming system that is the subject of the modification remains available to the public for play.

(e) *Compliance by charitable gaming operations.* This part does not apply to charitable gaming operations, provided that:

(1) The tribal government determines that the organization sponsoring the gaming operation is a charitable organization;

(2) All proceeds of the charitable gaming operation are for the benefit of the charitable organization;

(3) The TGRA permits the charitable organization to be exempt from this part;

(4) The charitable gaming operation is operated wholly by the charitable organization's employees or volunteers; and

(5) The annual gross gaming revenue of the charitable gaming operation does not exceed \$3,000,000.

(f) *Testing laboratories.* (1) A testing laboratory may provide the examination, testing, evaluating and reporting functions required by this section provided that:

(i) It demonstrates its integrity, independence and financial stability to the TGRA.

(ii) It demonstrates its technical skill and capability to the TGRA.

(iii) If the testing laboratory is owned or operated by, or affiliated with, a tribe, it must be independent from the manufacturer and gaming operator for whom it is providing the testing, evaluating, and reporting functions required by this section.

(iv) The TGRA:

(A) Makes a suitability determination of the testing laboratory based upon standards no less stringent than those set out in § 533.6(b)(1)(ii) through (v) of this chapter and based upon no less information than that required by § 537.1 of this chapter, or

(B) Accepts, in its discretion, a determination of suitability for the testing laboratory made by any other gaming regulatory authority in the United States.

(v) After reviewing the suitability determination and the information provided by the testing laboratory, the TGRA determines that the testing laboratory is qualified to test and evaluate Class II gaming systems.

(2) The TGRA must:

(i) Maintain a record of all determinations made pursuant to paragraphs (f)(1)(iii) and (f)(1)(iv) of this section for a minimum of three years.

(ii) Place the testing laboratory under a continuing obligation to notify it of any adverse regulatory action in any jurisdiction where the testing laboratory conducts business.

(iii) Require the testing laboratory to provide notice of any material changes to the information provided to the TGRA.

(g) *Records.* Records required to be maintained under this section must be made available to the Commission upon request. The Commission may use the information derived therefrom for any lawful purpose including, without limitation, to monitor the use of Class II gaming systems, to assess the effectiveness of the standards required by this part, and to inform future amendments to this part. The Commission will only make available for public review records or portions of records subject to release under the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C.

552a; or the Indian Gaming Regulatory Act, 25 U.S.C. 2716(a).

Dated: September 19, 2017.

Jonodev O. Chaudhuri,
Chairman.

Kathryn Isom-Clause,
Vice Chair.

E. Sequoyah Simermeyer,
Associate Commissioner.

[FR Doc. 2017-20635 Filed 9-27-17; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 5f

[REG-128841-07]

RIN 1545-BG91

Public Approval of Tax-Exempt Private Activity Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations to update and streamline the public approval requirement provided in section 147(f) of the Internal Revenue Code applicable to tax-exempt private activity bonds issued by State and local governments. The proposed regulations would update the existing regulations on the public approval requirement to reflect statutory changes, to streamline the public approval process, and to reduce burden on State and local governments that issue tax-exempt private activity bonds. This document also withdraws two previous notices of proposed rulemaking on this topic. The proposed regulations affect State and local governments that issue tax-exempt private activity bonds.

DATES: Comments and requests for a public hearing must be received by December 27, 2017.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-128841-07), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-128841-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at

www.regulations.gov (IRS REG-128841-07).

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Spence Hanemann at (202) 317-6980; concerning submissions of comments and requesting a hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review under OMB Control Number 1545-2185 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The collection of information in this proposed regulation is the requirement in § 1.147(f)-1 that certain information be contained in a public notice or public approval and, consequently, disclosed to the public. This information is required to meet the statutory public approval requirement provided in section 147(f). The likely respondents are the governmental units required to approve an issue of private activity bonds under section 147(f).

Estimated total annual burden: 2,600 hours.

Estimated average annual burden per respondent: 1.3 Hours.

Estimated number of respondents: 2,000.

Estimated frequency of responses: Annual.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 27, 2017.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection

techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR part 1 under section 147(f) of the Internal Revenue Code of 1986 (the Code) and 26 CFR part 5f under section 103(k) of the Internal Revenue Code of 1954 (the 1954 Code). In the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97-248, 96 Stat. 324, Congress added section 103(k) to the 1954 Code to impose a public approval requirement on tax-exempt industrial development bonds. On May 11, 1983, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (48 FR 21117) temporary regulations under section 103(k) of the 1954 Code (TD 7892) (the Existing Regulations). See § 5f.103-2. A notice of proposed rulemaking (LR-221-82) by cross-reference to the temporary regulations was published in the **Federal Register** (48 FR 21166) on the same day.

In the Tax Reform Act of 1986 (1986 Tax Act), Public Law 99-514, 100 Stat. 2085, Congress reorganized the tax-exempt bond provisions and carried forward the public approval requirement of section 103(k) of the 1954 Code in expanded form in section 147(f) of the Code. In section 147(f), Congress extended the public approval requirement to apply to all types of tax-exempt private activity bonds, as provided in section 141(e). The legislative history of the 1986 Tax Act indicates that “[t]he conferees intend that, to the extent not amended, all principles of present law continue to apply under the reorganized provisions.” H.R. Rep. No. 99-841, at II-686 (1986) (Conf. Rep.). Thus, the Existing Regulations in § 5f.103-2 remain in effect.

On September 9, 2008, the Treasury Department and the IRS published a

notice of proposed rulemaking (REG–128841–07) in the **Federal Register** (73 FR 52220) that proposed regulations to amend and supplement the Existing Regulations (the 2008 Proposed Regulations). The Treasury Department and the IRS received public comments on the 2008 Proposed Regulations and held a public hearing on January 26, 2009. As discussed more fully in the Explanation of Provisions section of this preamble, the Treasury Department and the IRS have decided to withdraw the 2008 Proposed Regulations in full and to propose new regulations. This document contains those new proposed regulations (the Proposed Regulations).

Explanation of Provisions

1. Introduction

In general, pursuant to section 103 of the Code, interest received by investors on eligible State and local bonds is tax-exempt for Federal income tax purposes. Interest on private activity bonds qualifies for this tax-exempt treatment only if the bonds meet the requirements for “qualified bonds” as defined in section 141(e) and other applicable requirements provided in section 103. Section 141(e) of the Code requires, among other things, that qualified bonds meet the public approval requirement of section 147(f).

The Proposed Regulations would update the Existing Regulations to address subsequent statutory changes and to streamline the public approval process. The Proposed Regulations provide greater flexibility to State and local governments with respect to the public approval process to reduce administrative burdens associated with the public approval requirement. The Proposed Regulations recognize advances in technology and electronic communication that may facilitate more streamlined procedures for providing reasonable public notice of a public hearing.

2. The 2008 Proposed Regulations

The 2008 Proposed Regulations proposed to update, clarify, and simplify discrete aspects of the Existing Regulations regarding the public approval requirement. The 2008 Proposed Regulations focused on the scope, information content, methods, and timing for the public approval process, and generally did not focus on the governmental entities from which public approval is required. Overall, the public comments on the 2008 Proposed Regulations were favorable.

The Proposed Regulations generally incorporate the amendments proposed in the 2008 Proposed Regulations with

modifications in response to the public comments. One comment focused on the structure of the 2008 Proposed Regulations. The 2008 Proposed Regulations would have revised the Existing Regulations by amending existing rules and adding new rules. The 2008 Proposed Regulations further provided that the Existing Regulations would remain in effect to the extent not inconsistent with the final version of the 2008 Proposed Regulations. Commenters expressed concern about potential confusion over two distinct and partially inconsistent regulation sections governing the public approval requirement. The Treasury Department and the IRS understand this concern. Accordingly, the Proposed Regulations consolidate the guidance in the Existing Regulations and the 2008 Proposed Regulations, with modifications in response to the public comments and other recent developments, into new proposed guidance and provide a further opportunity for public comment.

The Treasury Department and the IRS also received numerous comments regarding the level of specificity of information required to be contained in reasonable public notice of a public hearing or a public approval. Generally, the 2008 Proposed Regulations proposed to allow the issuer to provide streamlined information about projects to be financed, and the Existing Regulations require a greater level of specificity of information about such projects. The 2008 Proposed Regulations also proposed to afford issuers more flexibility regarding the effect of post-issuance changes from the reasonably expected facts provided in the reasonable public notice or public approval. Commenters expressed differing views on whether these proposed amendments in the 2008 Proposed Regulations should be adopted. Commenters in favor of these amendments generally applauded the reduced burden that issuers would bear under the 2008 Proposed Regulations and suggested ways in which that burden could be reduced further. Commenters opposed to these amendments generally argued that reducing the amount of public information would limit the public’s ability to approve or oppose on an informed basis new private activity bonds and proposed projects to be financed. The legislative history of the public approval requirement emphasizes the importance of “a reasonable opportunity for persons with differing views on both issuance of the bonds and the location and nature of the proposed facility to be heard.” S. Rep.

No. 97–494, at 171 (1982). With respect to these proposed amendments, the Treasury Department and the IRS have determined that the information that would have been required by the 2008 Proposed Regulations is sufficient to permit the public to evaluate the merits of both the issuance of the bonds and the location and nature of the financed facility. Thus, the burden imposed by the Existing Regulations may be reduced as provided in the 2008 Proposed Regulations without significantly impairing the public’s consideration of new private activity bonds. Accordingly, the Proposed Regulations generally retain the streamlined information and post-issuance flexibility proposed in the 2008 Proposed Regulations and provide for additional post-issuance flexibility. (See section 6 of this Explanation of Provisions.)

Commenters also provided differing views on the amendments in the 2008 Proposed Regulations that proposed changes to the procedures for providing reasonable public notice of a public hearing. The Existing Regulations generally permit an issuer to publicize notice by newspaper, radio, or television, and presume notice to be reasonable if published at least 14 days prior to the date of the public hearing. The 2008 Proposed Regulations proposed to expand the permitted methods of providing public notice to include notice by newspaper, radio, television, Web site, or other permitted methods of giving public notice under State law, and would have shortened the presumptively reasonable notice period to seven days in advance of the hearing. Commenters in favor of these amendments generally stated that the proposed amendments would ease the burden of providing the public notice. Commenters opposed to these amendments generally expressed concern that seven days’ notice of a public hearing would not provide the public sufficient time to make an informed decision and to make arrangements to be present at the hearing. The legislative history of TEFRA indicates that Congress expected notice to be published no fewer than 14 days before the scheduled date of the hearing. *See* S. Rep. No. 97–494, at 171 (1982). In response to these comments, the Proposed Regulations adopt and expand the permitted methods for giving notice of a public hearing that were proposed in the 2008 Proposed Regulations, but retain the 14-day notice period presumed reasonable under the Existing Regulations consistent with the expectations of Congress.

3. Host Approval and Issuer Approval

Section 147(f) generally requires that both the governmental unit that issues the bonds (or on behalf of which the bonds are issued) and a governmental unit with jurisdiction over the location of the financed project approve an issue of private activity bonds (and the approvals are referred to as the issuer approval and the host approval, respectively). The Proposed Regulations generally carry forward the rules on issuer approval and host approval from the Existing Regulations, with limited revisions to address statutory changes that affect the application of these rules to certain types of private activity bonds. Thus, for example, the Proposed Regulations include guidance to address subsequent statutory changes in section 147(f)(3) and (4) that added special provisions regarding the issuer approval and host approval requirements for certain financings involving airports, high-speed rail facilities, qualified scholarship funding corporations, and volunteer fire departments.

The 1986 Tax Act extended the public approval requirement beyond the traditional, facility-focused industrial development bonds subject to the requirement under the 1954 Code to include certain special types of financings that are not facility-specific, including “qualified mortgage bonds” as defined in section 143(a), “qualified veterans’ mortgage bonds” as defined in section 143(b), “qualified student loan bonds” as defined in section 144(b), and “qualified 501(c)(3) bonds” as defined in section 145. For these types of bonds, obtaining a host approval may be impractical or unworkable. For example, for qualified mortgage bonds, the locations of many of the homes to be financed with qualified mortgage loans generally are unknown at the time of issuance of the bonds and thus it may be difficult to identify appropriate governmental units to provide host approval. Moreover, for qualified student loan bonds and for qualified 501(c)(3) bonds used to finance working capital expenditures, the application of the host approval requirement is unworkable because the assets and expenditures financed have no physical location. In recognition of the practical difficulties faced by issuers of these types of bonds under the Existing Regulations, the Proposed Regulations provide that no host approval is necessary for mortgage revenue bonds (defined as qualified mortgage bonds, qualified veterans’ mortgage bonds, and certain refundings of bonds issued to finance mortgages of owner-occupied residences under the law prior to

enactment of section 143), qualified student loan bonds, or qualified 501(c)(3) bonds used to finance working capital expenditures.

4. Reasonable Public Notice and Public Hearing

The Existing Regulations generally provide that an applicable elected representative of the approving governmental unit may approve an issue following a public hearing for which there was reasonable public notice. The Existing Regulations provide guidance on permitted methods for giving reasonable public notice and holding public hearings. The Proposed Regulations would expand these methods to provide greater flexibility to State and local governments for providing reasonable public notice.

The Existing Regulations provide generally that reasonable public notice must be published in a newspaper of general circulation available to residents of the relevant locality or announced by radio or television broadcast to those residents. The Proposed Regulations would expand the permitted methods of providing reasonable public notice to provide greater flexibility and to recognize advances in technology and electronic communications. Thus, the Proposed Regulations would allow reasonable public notice by newspaper publication, radio or television broadcast, postings on a governmental unit’s public Web site, or alternative methods permitted under a general State law for public notices for public hearings of a governmental unit. The Treasury Department and the IRS solicit comment on other possible methods of providing reasonable public notice to foster flexibility and to reduce administrative burdens.

5. Content of Reasonable Public Notice and Public Approval

A. General Rules for Content of Reasonable Public Notice and Public Approval

The Existing Regulations generally require that the reasonable public notice and the public approval contain the following information: A general, functional description of the type and use of the facility to be financed; the maximum aggregate face amount of the bonds to be issued for the facility; the initial owner, operator, or manager of the facility; and the location of the facility by street address or, if none, by a general description designed to inform readers of the specific location. The required level of specificity of information for the public approval process under the Existing Regulations

has proven to be unduly limiting and burdensome in certain respects. The Proposed Regulations generally retain the requirements that information (public approval information) be provided for the public approval process but refine the required public approval information to reduce burden and enhance flexibility.

Initially, the Existing Regulations focus on an individual “facility” as the unit of financed property for which the issuer must provide the relevant information. The definition of “facility” in the Existing Regulations includes facilities on multiple tracts of land only if the facilities are used in an integrated operation. Whether facilities are part of an “integrated operation” has proven difficult to determine.

The Proposed Regulations use the term “project” in lieu of the term “facility” because “project” more clearly indicates that financed property may consist of multiple buildings and multiple sites. The Proposed Regulations define the term “project” generally to mean one or more capital projects or facilities, including land, buildings, equipment, and other property, to be financed with an issue, that are located on the same site, or adjacent or proximate sites used for similar purposes. In addition, to address certain special types of loan financings, the definition of a project under the Proposed Regulations also includes mortgage loans financed by mortgage revenue bonds, student loans financed by qualified student loan bonds, and working capital expenditures financed by qualified 501(c)(3) bonds.

The Proposed Regulations would continue to require a general functional description of the type and use of the financed project. The Proposed Regulations, however, would mitigate the required level of specificity of that information. Thus, the Proposed Regulations would allow an issuer of exempt facility bonds to satisfy this requirement through a statement that identifies the category of exempt facility bond (for example, bonds financing an airport or a mass commuting facility). Similarly, an issuer of other types of private activity bonds may satisfy this requirement through a statement that identifies the type of bonds and the type and use of the project (for example, qualified small issue bonds for a manufacturing facility).

The Proposed Regulations would continue to require that the public approval information include the name of the expected initial owner or the principal user of the project. The Proposed Regulations, however, would permit an issuer to name the true

beneficial party of interest as an alternative to naming a legal owner or user (for example, the name of a nonprofit hospital organization instead of a limited liability company that serves as the legal owner of a hospital).

The Proposed Regulations would continue to require that the public approval information include the location of the project by street address. The Proposed Regulations, however, would clarify that a description by boundary streets or other geographic boundaries suffices to meet this location requirement. The Proposed Regulations would allow a consolidated description of the location of a project on the same site or on adjacent or proximate sites (for example, a college campus).

B. Special Rules for Mortgage Revenue Bonds, Qualified Student Loan Bonds, and Certain Qualified 501(c)(3) Bonds

The 1986 Tax Act extended the public approval requirement to mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds. The Existing Regulations were promulgated before the 1986 Tax Act and thus provide no guidance tailored to the application of the public approval requirement to these types of bonds. In the General Explanation of the 1986 Tax Act, the Staff of the Joint Committee on Taxation stated that, “[i]n extending this requirement to all private activity bonds, Congress intended that the applicable Treasury regulations will be amended for student loan bonds (where no facilities are financed), mortgage revenue bonds (where the exact residences to be financed may not be identified before issuance of the bonds), and qualified 501(c)(3) bonds that qualify for the special exception to the maturity limitation for pooled financings (where the facilities need not be identified before issuance of the bonds).” Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986 (JCS–10–87), at 1219 (May 4, 1987). Accordingly, the Proposed Regulations provide special rules for public approval of mortgage revenue bonds, qualified student loan bonds, and qualified 501(c)(3) bonds issued for pooled financings as described in section 147(b)(4).

For mortgage revenue bonds, the Proposed Regulations would require the public approval information to state that the bonds will finance residential mortgages, provide the maximum stated principal amount of the bonds, and generally describe the issuer’s geographic jurisdiction in which the residences to be financed with the mortgage loans are expected to be located. Similarly, for qualified student

loan bonds, the Proposed Regulations would require the public approval information to state that the bonds will finance student loans and provide the maximum stated principal amount of the bonds. For these two types of bonds, the Proposed Regulations would not require the names of borrowers to be included in the public approval information.

For qualified 501(c)(3) bonds that finance loans described in the special provision for pooled loan financings in section 147(b)(4), the Proposed Regulations would permit the issuer to choose to apply a two-stage public approval process if the issuer has insufficient information at the time of the reasonable public notice or public approval to meet the general public approval information requirements. To apply this special rule, the issuer must first obtain public approval within the time specified in the Proposed Regulations for public approval generally. For this first-stage public approval, the public approval information must state that the bonds will be qualified 501(c)(3) bonds used to finance loans described in section 147(b)(4)(B), provide the maximum stated principal amount of the bonds, generally describe the type of project to be financed with such loans (for example, loans for hospital facilities or college facilities), and state that the issuer will obtain an additional public approval with specific project information before origination of any such loans. In addition, before loan origination, the issuer must obtain a supplemental public approval of that loan containing all of the project-specific information that the public approval information rules generally require.

6. Deviations From the Information in the Reasonable Public Notice and Public Approval

Differences or “deviations” between information regarding a proposed project to be financed with a proposed issuance of private activity bonds that serves as the basis for a public approval and the actual project financed with the bonds may affect the validity of the public approval. The Existing Regulations and the Proposed Regulations provide that insubstantial deviations do not invalidate a public approval. The Proposed Regulations provide additional guidance concerning differences that constitute insubstantial deviations and also allow remedial actions to cure certain substantial deviations.

The Proposed Regulations provide that whether a deviation is substantial

generally depends on all of the facts and circumstances. The Proposed Regulations, however, would always treat a change in the fundamental nature or type of a project as a substantial deviation.

The Proposed Regulations would treat certain specified deviations from the public approval information provided as insubstantial deviations. For example, a deviation from the size of a proposed bond issue for a proposed project specified in public approval information is an insubstantial deviation if the stated principal amount of bonds actually issued and used for the project is no more than ten percent (10%) greater than the maximum stated principal amount publicly approved for the project or is any amount less than that maximum stated principal amount. Furthermore, if an issuer applies proceeds of an issue approved for use on one project to pay working capital expenditures directly associated with any project approved in the same public approval, that deviation is an insubstantial deviation. Finally, a deviation between the initial owner or principal user of the project identified in the public approval information and the actual initial owner or principal user of the project is an insubstantial deviation if the parties are related on the issue date.

The Proposed Regulations would allow supplemental post-issuance public approvals to cure certain substantial deviations that result from unexpected events or unforeseen changes in circumstances that occur after the issuance of the bonds. This remedial action is similar to a permitted post-issuance public approval under § 1.141–12(e)(2) and (f) used for remedial actions for purposes of the private business restrictions.

7. Applicability Dates and Reliance

The Proposed Regulations are proposed to apply to bonds issued pursuant to a public approval that occurs on or after the date that is 90 days after publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Issuers may apply the Proposed Regulations, in whole but not in part, to bonds that are issued pursuant to a public approval that occurs on or after September 28, 2017 and before the applicability date provided in a Treasury decision adopting these rules as final regulations in the **Federal Register**.

In addition, the Treasury Department and the IRS propose to remove the Existing Regulations under § 5f.103–2 from 26 CFR part 5f effective on the

general applicability date of the final regulations, which is proposed to be the date that is 90 days after publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The Existing Regulations provide guidance on the minimum informational content, procedures, and timing for the statutorily required public notices, public hearings, and public approvals. Although the Proposed Regulations are expected to affect a significant number of small State or local governmental units that issue tax-exempt private activity bonds, the Proposed Regulations are not expected to have a significant economic effect on those governmental units because the Proposed Regulations generally would streamline and simplify the Existing Regulations in various respects to reduce the administrative burdens of meeting the statutory public approval requirement. For example, the Proposed Regulations would permit publication of public notice by Web site to reduce costs associated with print publication or radio or television broadcast, reduce the information required to be contained in public notice and public approval for certain types of bonds, liberalize the consequences of insubstantial changes in project information, and permit curative actions to address certain circumstances in which finished projects differ from descriptions provided in the public notice or public approval. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small entities.

Comments and Requests for Public Hearing

Before the Proposed Regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the

proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Spence Hanemann and Vicky Tsilas, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 5f

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-128841-07) that was published in the **Federal Register** (73 FR 52220) on September 9, 2008, is withdrawn. Also, under the authority of 26 U.S.C. 7805, § 1.103-17 of the notice of proposed rulemaking (LR-221-82) published in the **Federal Register** (48 FR 21166) on May 11, 1983, is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 5f are proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.147(f)-1 is added to read as follows:

§ 1.147(f)-1 Public approval of private activity bonds.

(a) *In general.* Interest on a private activity bond is excludable from gross income under section 103(a) only if the bond meets the requirements for a qualified bond as defined in section 141(e) and other applicable requirements provided in section 103. In order to be a qualified bond as defined in section 141(e), among other requirements, a private activity bond must meet the requirements of section

147(f). A private activity bond meets the requirements of section 147(f) only if the bond is publicly approved pursuant to paragraph (b) of this section or the bond qualifies for the exception for refunding bonds in section 147(f)(2)(D).

(b) *Public approval requirement*—(1) *In general.* Except as otherwise provided in this section, a bond meets the requirements of section 147(f) if, before the issue date, the issue of which the bond is a part receives issuer approval and host approval (each a *public approval*) as defined in paragraphs (b)(2) and (3) of this section in accordance with the method and process set forth in paragraphs (c) through (f) of this section.

(2) *Issuer approval.* Except as otherwise provided in this section, *issuer approval* means an approval that meets the requirements of this paragraph (b)(2). Either the governmental unit that issues the issue or the governmental unit on behalf of which the issue is issued must approve the issue. For this purpose, § 1.103-1 applies to the determination of whether an issuer issues bonds on behalf of another governmental unit. If an issuer issues bonds on behalf of more than one governmental unit (for example, in the case of an authority that acts for two counties), any one of those governmental units may provide the issuer approval.

(3) *Host approval.* Except as otherwise provided in this section, *host approval* means an approval that meets the requirements of this paragraph (b)(3). Each governmental unit the geographic jurisdiction of which contains the site of a project to be financed by the issue must approve the issue. If, however, the entire site of a project to be financed by the issue is within the geographic jurisdiction of more than one governmental unit within a State (counting the State as a governmental unit within such State), then any one of those governmental units may provide host approval for the issue for that project. For purposes of the host approval, if a project to be financed by the issue is located within the geographic jurisdiction of two or more governmental units but not entirely within any one of those governmental units, each portion of the project that is located entirely within the geographic jurisdiction of the respective governmental units may be treated as a separate project. The issuer approval provided pursuant to paragraph (b)(2) of this section may be treated as a host approval if the governmental unit providing the issuer approval is also a governmental unit eligible to provide

the host approval pursuant to this paragraph (b)(3).

(4) *Special rule for host approval of airports or high-speed intercity rail facilities.* Pursuant to a special rule in section 147(f)(3), if the proceeds of an issue are to be used to finance a project that consists of either facilities located at an airport (within the meaning of section 142(a)(1)) or high-speed intercity rail facilities (within the meaning of section 142(a)(11)) and the issuer of that issue is the owner or operator of the airport or high-speed intercity rail facilities, the issuer is the only governmental unit that is required to provide the host approval for that project.

(5) *Special rule for issuer approval of scholarship funding bond issues and volunteer fire department bond issues.* In the case of a qualified scholarship funding bond as defined in section 150(d)(2), the governmental unit that made a request described in section 150(d)(2)(B) with respect to the issuer of the bond is the governmental unit on behalf of which the bond was issued for purposes of the issuer approval. If more than one governmental unit within a State made a request described in section 150(d)(2)(B), the State or any such requesting governmental unit may be treated as the governmental unit on behalf of which the bond was issued for purposes of the issuer approval. In the case of a bond of a volunteer fire department treated as a bond of a political subdivision of a State under section 150(e), the political subdivision described in section 150(e)(2)(B) with respect to that volunteer fire department is the governmental unit on behalf of which the bond is issued for purposes of the issuer approval.

(6) *Host approval not required for issues of mortgage revenue bonds, student loan bonds, and certain qualified 501(c)(3) bonds.* In the case of a mortgage revenue bond (as defined in paragraph (g)(5) of this section), a qualified student loan bond as defined in section 144(b), and the portion of an issue of qualified 501(c)(3) bonds as defined in section 145 that finances working capital expenditures, the issue or portion of the issue must receive an issuer approval but no host approval is necessary.

(c) *Method of public approval.* The method of public approval of an issue must satisfy either paragraph (c)(1) or (2) of this section. An approval may satisfy the requirements of this paragraph (c) without regard to the authority under State or local law for the acts constituting that approval.

(1) *Applicable elected representative.* An applicable elected representative of

the approving governmental unit approves the issue following a public hearing for which there was reasonable public notice.

(2) *Voter referendum.* A voter referendum of the approving governmental unit approves the issue.

(d) *Public hearing and reasonable public notice—(1) Public hearing.* *Public hearing* means a forum providing a reasonable opportunity for interested individuals to express their views, orally or in writing, on the proposed issue of bonds and the location and nature of the proposed project to be financed.

(2) *Location of the public hearing.* The public hearing must be held in a location that, based on the facts and circumstances, is convenient for residents of the approving governmental unit. The location of the public hearing is presumed convenient for residents of the unit if the public hearing is located in the approving governmental unit's capital or seat of government. If more than one governmental unit is required to hold a public hearing, the hearings may be combined as long as the combined hearing affords the residents of all of the participating governmental units a reasonable opportunity to be heard. The location of any combined hearing is presumed convenient for residents of each participating governmental unit if it is no farther than 100 miles from the seat of government of each participating governmental unit beyond whose geographic jurisdiction the hearing is conducted.

(3) *Procedures for conducting the public hearing.* In general, a governmental unit may select its own procedure for a public hearing, provided that interested individuals have a reasonable opportunity to express their views. Thus, a governmental unit may impose reasonable requirements on persons who wish to participate in the hearing, such as a requirement that persons desiring to speak at the hearing make a written request to speak at least 24 hours before the hearing or that they limit their oral remarks to a prescribed time. For this purpose, it is unnecessary, for example, that the applicable elected representative of the approving governmental unit be present at the hearing, that a report on the hearing be submitted to that applicable elected representative, or that State administrative procedural requirements for public hearings be observed. Except to the extent State procedural requirements for public hearings are in conflict with a specific requirement of this section, a public hearing performed in compliance with State procedural requirements satisfies the requirements

for a public hearing in this paragraph (d). A public hearing may be conducted by an individual appointed or employed to perform such function by the governmental unit or its agencies, or by the issuer. Thus, for example, for bonds to be issued by an authority that acts on behalf of a county, the hearing may be conducted by the authority, the county, or an appointee of either.

(4) *Reasonable public notice.* *Reasonable public notice* means notice that is reasonably designed to inform residents of an approving governmental unit, including the issuing governmental unit and the governmental unit in whose geographic jurisdiction a project is to be located, of the proposed issue. The notice must state the time and place for the public hearing and contain the information required by paragraph (f)(2) of this section. Notice is presumed to be reasonably designed to inform residents of an approving governmental unit if it satisfies the requirements of this paragraph (d)(4) and is given no fewer than fourteen (14) calendar days before the public hearing in one or more of the ways set forth in paragraphs (d)(4)(i) through (iv) of this section.

(i) *Newspaper publication.* Public notice may be given by publication in one or more newspapers of general circulation available to the residents of the governmental unit.

(ii) *Radio or television broadcast.* Public notice may be given by radio or television broadcast to the residents of the governmental unit.

(iii) *Governmental unit Web site posting.* Public notice may be given by electronic posting on the approving governmental unit's public Web site used to inform its residents about events affecting the residents (for example, notice of public meetings of the governmental unit). In the case of public notice provided as described in the first sentence of this paragraph (d)(4)(iii), the governmental unit must offer a reasonable, publicly known alternative method for obtaining the information contained in the public notice for residents without access to the Internet (such as telephone recordings).

(iv) *Alternative State law public notice procedures.* Public notice may be given in a way that is permitted under a general State law for public notices for public hearings for the approving governmental unit.

(e) *Applicable elected representative—(1) In general—(i) Definition of applicable elected representative.* The *applicable elected representative* of a governmental unit means—

(A) The governmental unit's elected legislative body;

(B) The governmental unit's chief elected executive officer;

(C) In the case of a State, the chief elected legal officer of the State's executive branch of government; or

(D) Any official elected by the voters of the governmental unit and designated for purposes of this section by the governmental unit's chief elected executive officer or by State or local law to approve issues for the governmental unit.

(ii) *Elected officials.* For purposes of paragraphs (e)(1)(i)(B), (C), and (D) of this section, an official is considered elected only if that official is popularly elected at-large by the voters of the governmental unit. If an official popularly elected at-large by the voters of a governmental unit is appointed or selected pursuant to State or local law to be the chief executive officer of the unit, that official is deemed to be an elected chief executive officer for purposes of this section but for no longer than the official's tenure as an official popularly elected at-large.

(iii) *Legislative bodies.* In the case of a bicameral legislature that is popularly elected, both chambers together constitute an applicable elected representative. Absent designation under paragraph (e)(1)(i)(D) of this section, however, neither such chamber independently constitutes an applicable elected representative. If multiple elected legislative bodies of a governmental unit have independent legislative authority, the body with the more specific authority relating to the issue is the only legislative body that is treated as an elected legislative body under paragraph (e)(1)(i)(A) of this section.

(2) *Governmental unit with no applicable elected representative—(i) In general.* The applicable elected representatives of a governmental unit with no applicable elected representative (but for this paragraph (e)(2) and section 147(f)(2)(E)(ii)) are the applicable elected representatives of the next higher governmental unit (with an applicable elected representative) from which the governmental unit derives its authority. Except as otherwise provided in this section, any governmental unit from which the governmental unit with no applicable elected representative derives its authority may be treated as the next higher governmental unit without regard to the relative status of such higher governmental unit under State law. A governmental unit derives its authority from another governmental unit that—

(A) Enacts a specific law (for example, a provision in a State constitution, charter, or statute) by or under which the governmental unit is created;

(B) Otherwise empowers or approves the creation of the governmental unit; or

(C) Appoints members to the governing body of the governmental unit.

(ii) *Host approval.* For purposes of a host approval, a governmental unit may be treated as the next higher governmental unit only if the project is located within its geographic jurisdiction and eligible residents of the unit are entitled to vote for its applicable elected representatives.

(3) *On behalf of issuers.* In the case of an issuer that issues bonds on behalf of a governmental unit, the applicable elected representative is any applicable elected representative of the governmental unit on behalf of which the bonds are issued.

(f) *Public approval process—(1) In general.* The public approval process for an issue, including scope, content, and timing of the public approval, must meet the requirements of this paragraph (f). A governmental unit must timely approve either each project to be financed with proceeds of the issue or a plan of financing for each project to be financed with proceeds of the issue.

(2) *General rule on information required for a reasonable public notice and public approval.* Except as otherwise provided in this section, a project to be financed with proceeds of an issue is within the scope of a public approval under section 147(f) if the reasonable public notice of the public hearing, if applicable, and the public approval (together the notice and approval) include the information set forth in paragraphs (f)(2)(i) through (iv) of this section.

(i) *The project.* The notice and approval must include a general functional description of the type and use of the project to be financed with the issue. For this purpose, a project description is sufficient if it identifies the project by reference to a particular category of exempt facility bond to be issued (for example, an exempt facility bond for an airport pursuant to section 142(a)(1)) or by reference to another general category of private activity bond together with information on the type and use of the project to be financed with the issue (for example, a qualified small issue bond as defined in section 144(a) for a manufacturing facility or a qualified 501(c)(3) bond as defined in section 145 for a hospital facility and working capital expenditures).

approval must include the maximum stated principal amount of the issue of private activity bonds to be issued to finance the project. If an issue finances multiple projects (for example, facilities at different locations on non-proximate sites that are not treated as part of the same project), the notice and approval must specify separately the maximum stated principal amount of bonds to be issued to finance each separate project.

(iii) *The name of the initial owner or principal user of the project.* The notice and approval must include the name of the expected initial owner or principal user (within the meaning of section 144(a)) of the project. The name provided may be either the name of the legal owner or principal user of the project or, alternatively, the name of the true beneficial party of interest for such legal owner or user (for example, the name of a 501(c)(3) organization that is the sole member of a limited liability company that is the legal owner).

(iv) *The location of the project.* The notice and approval must include a general description of the prospective location of the project by street address, reference to boundary streets or other geographic boundaries, or other description of the specific geographic location that is reasonably designed to inform readers of the location. For a project involving multiple capital projects or facilities located on the same site, or on adjacent or reasonably proximate sites with similar uses, a consolidated description of the location of those capital projects or facilities provides a sufficient description of the location of the project. For example, a project for a section 501(c)(3) educational entity involving multiple buildings on the entity's main urban college campus may describe the location of the project by reference to the outside street boundaries of that campus with a reference to any noncontiguous features of that campus.

(3) *Special rule for mortgage revenue bonds.* Mortgage loans financed by mortgage revenue bonds are within the scope of a public approval if the notice and approval state that the bonds are to be issued to finance residential mortgages, provide the maximum stated principal amount of mortgage revenue bonds expected to be issued, and provide a general description of the geographic jurisdiction in which the residences to be financed with the proceeds of the mortgage revenue bonds are expected to be located (for example, residences located throughout a State for an issuer with a statewide jurisdiction or residences within a particular local geographic jurisdiction, such as within a city or county, for a

local issuer). For this purpose, in the case of mortgage revenue bonds, no information is required on specific names of mortgage loan borrowers or specific locations of individual residences to be financed.

(4) *Special rule for qualified student loan bonds.* Qualified student loans financed by qualified student loan bonds as defined in section 144(b) are within the scope of a public approval if the notice and approval state that the bonds will be issued to finance student loans and state the maximum stated principal amount of qualified student loan bonds expected to be issued for qualified student loans. For this purpose, in the case of qualified student loan bonds, no information is required with respect to names of specific student loan borrowers.

(5) *Special rule for certain qualified 501(c)(3) bonds.* Loans financed by qualified 501(c)(3) bonds issued pursuant to section 145 and described in section 147(b)(4)(B) (without regard to any election under section 147(b)(4)(A)) are within the scope of a public approval if the requirements of paragraphs (f)(5)(i) and (ii) of this section are met.

(i) *Pre-issuance general public approval.* Within the time period required by paragraph (f)(7) of this section, public approval is obtained after reasonable public notice of a public hearing is provided and a public hearing is held. For this purpose, a project is treated as described in the notice and approval if the notice and approval provide that the bonds will be qualified 501(c)(3) bonds to be used to finance loans described in section 147(b)(4)(B), state the maximum stated principal amount of bonds expected to be issued to finance loans to 501(c)(3) organizations or governmental units as described in section 147(b)(4)(B), provide a general description of the type of project to be financed with such loans (for example, loans for hospital facilities or college facilities), and state that an additional public approval that includes specific project information will be obtained before any such loans are originated.

(ii) *Post-issuance public approval for specific loans.* Except as provided in paragraph (f)(5)(iii) of this section, before a loan described in section 147(b)(4)(B) is originated, a supplemental public approval for the bonds to be used to finance that loan is obtained that meets all the requirements of section 147(f) and the requirements for a public approval in paragraph (b) of this section. This post-issuance supplemental public approval requirement applies by treating the

bonds to be used to finance such loan as if they were reissued for purposes of section 147(f) (without regard to paragraph (f)(5) of this section). For this purpose, proceeds to be used to finance such loan do not include the portion of the issue used to finance a common reserve fund or common costs of issuance.

(iii) *Exception to post-issuance public approval requirement.* A post-issuance supplemental public approval pursuant to paragraph (f)(5)(ii) of this section is unnecessary for the initial use of proceeds to finance one or more loans if the pre-issuance notice and approval pursuant to paragraph (f)(5)(i) of this section include the information required by paragraphs (f)(2)(i) through (iv) of this section for the projects to be financed by those loans.

(6) *Deviations in public approval information—(i) In general.* Except as otherwise provided in this section, a substantial deviation between the stated use of proceeds of an issue included in the information required to be provided in the notice and approval (*public approval information*) and the actual use of proceeds of the issue causes that issue to fail to meet the public approval requirement. Conversely, insubstantial deviations between the stated use of proceeds of an issue included in the public approval information and the actual use of proceeds of the issue do not cause such a failure. In general, the determination of whether a deviation is substantial is based on all the facts and circumstances. In all events, however, a change in the fundamental nature or type of a project is a substantial deviation.

(ii) *Certain insubstantial deviations in public approval information.* The following deviations from the public approval information in the notice and approval are treated as insubstantial deviations:

(A) *Size of bond issue and use of proceeds.* A deviation between the maximum stated principal amount of a proposed issuance of bonds to finance a project that is specified in public approval information and the actual stated principal amount of bonds issued and used to finance that project is an insubstantial deviation if that actual stated principal amount is no more than ten percent (10%) greater than that maximum stated principal amount or is any amount less than that maximum stated principal amount. In addition, the use of proceeds to pay working capital expenditures directly associated with any project specified in the public approval information is an insubstantial deviation.

(B) *Initial owner or principal user.* A deviation between the initial owner or principal user of the project named in the notice and approval and the actual initial owner or principal user of the project is an insubstantial deviation if such parties are related parties on the issue date of the issue.

(iii) *Supplemental public approval to cure certain substantial deviations in public approval information.* A substantial deviation between the stated use of proceeds of an issue included in the public approval information and the actual use of the proceeds of the issue does not cause that issue to fail to meet the public approval requirement if all of the following requirements are met:

(A) *Original public approval and reasonable expectations.* The issue met the requirements for a public approval in paragraph (b) of this section. In addition, on the issue date of the issue, the issuer reasonably expected there would be no substantial deviations between the stated use of proceeds of an issue included in the public approval information and the actual use of the proceeds of the issue.

(B) *Unexpected events or unforeseen changes in circumstances.* As a result of unexpected events or unforeseen changes in circumstances that occur after the issue date of the issue, the issuer determines to use proceeds of the issue in a manner or amount not provided in a public approval.

(C) *Supplemental public approval.* Before using proceeds of the bonds in a manner or amount not provided in a public approval, the issuer obtains a supplemental public approval for those bonds that meets the public approval requirement in paragraph (b) of this section. This supplemental public approval requirement applies by treating those bonds as if they were reissued for purposes of section 147(f).

(7) *Certain timing requirements.* Public approval of an issue is timely only if the issuer obtains the public approval within one year before the issue date of the issue. Public approval of a plan of financing is timely only if the issuer obtains public approval for the plan of financing within one year before the issue date of the first issue issued under the plan of financing and the issuer issues all issues under the plan of financing within three years after the issue date of such first issue.

(g) *Definitions.* The definitions in this paragraph (g) apply for purposes of this section. In addition, the general definitions in § 1.150–1 apply for purposes of this section.

(1) *Geographic jurisdiction* means the area encompassed by the boundaries prescribed by State or local law for a

governmental unit or, if there are no such boundaries, the area in which a unit may exercise such sovereign powers that make that unit a governmental unit for purposes of § 1.103–1 and this section.

(2) *Governmental unit* has the meaning of “State or local governmental unit” as defined in § 1.103–1. Thus, a governmental unit is a State, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof.

(3) *Host approval* is defined in paragraph (b)(3) of this section.

(4) *Issuer approval* is defined in paragraph (b)(2) of this section.

(5) *Mortgage revenue bonds* mean qualified mortgage bonds as defined in section 143(a), qualified veterans’ mortgage bonds as defined in section 143(b), or refunding bonds issued to finance mortgages of owner-occupied residences pursuant to applicable law in effect prior to enactment of section 143(a) or section 143(b).

(6) *Proceeds* means “proceeds” as defined in § 1.141–1(b), except that it does not include disposition proceeds.

(7) *Project* generally means one or more capital projects or facilities, including land, buildings, equipment, and other property, to be financed with an issue, that are located on the same site, or adjacent or proximate sites used for similar purposes, and that are subject to the public approval requirement of section 147(f). For an issue of mortgage revenue bonds or an issue of qualified student loan bonds as defined in section 144(b), the term project means the mortgage loans or qualified student loans to be financed with the proceeds of the issue. For an issue of qualified 501(c)(3) bonds as defined in section 145, the term project means a project as defined in the first sentence of this definition, and also is deemed to include working capital expenditures to be financed with proceeds of the issue.

(8) *Public approval information* is defined in paragraph (f)(6)(i) of this section.

(9) *Public hearing* is defined in paragraph (d)(1) of this section.

(10) *Reasonable public notice* is defined in paragraph (d)(4) of this section.

(11) *Voter referendum* means a vote by the voters of the affected governmental unit conducted in the same manner and time as voter referenda on matters relating to governmental spending or bond issuances by the governmental unit under applicable State and local law.

(h) *Applicability date*. This section applies to bonds issued pursuant to a

public approval occurring on or after the date that is 90 days after publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For bonds issued pursuant to a public approval occurring before that date, see § 5f.103–2 as contained in 26 CFR part 5f, revised as of the date of the most recent annual revision.

PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

■ **Par. 3.** The authority citation for part 5f continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 5f.103–2 [Removed]

■ **Par. 4.** Section 5f.103–2 is removed.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2017–20661 Filed 9–27–17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0215; FRL–9968–32–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Removal of Clean Air Interstate Rule (CAIR) Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the state implementation plan (SIP) revision submitted by the Commonwealth of Virginia for the purpose of removing regulations from the Virginia SIP that established EPA-administered annual NO_x, ozone season NO_x, and sulfur dioxide (SO₂) trading programs under the Clean Air Interstate Rule (CAIR). These EPA-administered trading programs under CAIR were discontinued on December 31, 2014 upon the implementation of the Cross-State Air Pollution Rule (CASPR), which was promulgated by EPA to replace CAIR. In the Final Rules section of this **Federal Register**, EPA is approving the State’s SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no

adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 30, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0215 at <https://www.regulations.gov>, or via email to stahl.cynthia@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

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

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the “Rules and Regulations” section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: September 8, 2017.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

[FR Doc. 2017-20723 Filed 9-27-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2017-0083; FRL-9968-43-Region 1]

Air Plan Approval; New Hampshire; Nonattainment Plan for the Central New Hampshire SO₂ Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) revision that the State of New Hampshire submitted to EPA on January 31, 2017 for attaining the 1-hour sulfur dioxide (SO₂) primary national ambient air quality standard (NAAQS) for the Central New Hampshire Nonattainment Area. This plan (herein called a “nonattainment plan”) includes New Hampshire’s attainment demonstration and other elements required under the Clean Air Act (CAA). In addition to an attainment demonstration, the nonattainment plan addresses the requirement for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology (RACT/RACM), base-year and projection-year emission inventories, and contingency measures. As a part of approving the attainment demonstration, EPA is also proposing to approve SO₂ emission limits and associated compliance parameters for Merrimack Station into the New Hampshire SIP. EPA proposes to conclude that New Hampshire has appropriately demonstrated that the nonattainment plan provisions provide for attainment of the 2010 1-hour primary SO₂ NAAQS in the Central New Hampshire Nonattainment Area by the applicable attainment date and that the nonattainment plan meets the other applicable requirements under the CAA.

DATES: Comments must be received on or before October 30, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2017-0083 at <http://www.regulations.gov>, or via email to biton.leiran@epa.gov. For comments

submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.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://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Leiran Biton, EPA New England, 5 Post Office Square Suite 100, Mail Code OEP05-2, Boston, MA 02109-3912; phone: 617-918-1267; fax: 617-918-0267; email: biton.leiran@epa.gov.

SUPPLEMENTARY INFORMATION:

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

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I. Why was New Hampshire required to submit an SO₂ plan for the Central New Hampshire Nonattainment area?

On June 22, 2010, EPA promulgated a new 1-hour primary SO₂ NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. See 75 FR 35520, codified at 40 CFR 50.17(a)–(b). On August 5, 2013, EPA designated a first set of 29 areas of the country as nonattainment for the 2010 SO₂ NAAQS, including the Central New Hampshire Nonattainment Area within the State of New Hampshire. See 78 FR 47191, codified at 40 CFR part 81, subpart C. These area designations were effective October 4, 2013. Section 191 of the CAA directs states to submit SIPs for areas designated as nonattainment for the SO₂ NAAQS to EPA within 18 months of the effective date of the designation, *i.e.*, by no later than April 4, 2015 in this case. These SIPs are required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation, which is October 4, 2018.

For a number of areas, including the Central New Hampshire Nonattainment Area, EPA published a notice on March 18, 2016 that New Hampshire and other pertinent states had failed to submit the required SO₂ nonattainment plan by the submittal deadline. See 81 FR 14736. This finding initiated a deadline under CAA section 179(a) for the potential imposition of new source and highway funding sanctions, and for EPA to promulgate a federal implementation plan (FIP) under section 110(c) of the CAA. In response to the requirement for SO₂ nonattainment plan submittals, New Hampshire submitted a nonattainment plan for the Central New Hampshire Nonattainment Area on January 31, 2017. Pursuant to New Hampshire’s January 31, 2017 submittal and EPA’s subsequent letter dated March 20, 2017 to New Hampshire finding the submittal complete and noting the stopping of the sanctions deadline, these sanctions under section 179(a) will not be imposed. However, to

stop the deadline for EPA to promulgate a FIP, the state must have made the necessary complete submittal and EPA must have approved the submittal as meeting applicable requirements no later than two years after the prior finding of failure to submit. Therefore, EPA remains under a FIP deadline of April 18, 2018. This FIP obligation will not apply if EPA issues final approval of New Hampshire's SIP submittal by April 18, 2018.

The remainder of this preamble describes the requirements that nonattainment plans must meet in order to obtain EPA approval, provides a review of the State's plan with respect to these requirements, and describes EPA's proposed action on the plan.

II. Requirements for SO₂ Nonattainment Area Plans

Nonattainment SIPs must meet the applicable requirements of the CAA, and specifically CAA sections 110, 172, 191 and 192. EPA's regulations governing nonattainment SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued comprehensive guidance on SIPs in a document entitled, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," published at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed SO₂ SIPs and fundamental principles for SIP control strategies. *Id.*, at 13545–49, 13567–68. On April 23, 2014, EPA issued recommended guidance for meeting the statutory requirements in SO₂ SIPs, in a document entitled, "Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions," available at https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf. In this guidance, EPA described the statutory requirements for a complete nonattainment area SIP, which includes: An accurate emissions inventory of current emissions for all sources of SO₂ within the nonattainment area, an attainment demonstration, demonstration of RFP, implementation of RACM (including RACT), an approvable NSR program, enforceable emissions limitations and control measures as needed for timely attainment, and adequate contingency measures for the affected area.

In order for EPA to fully approve a SIP as meeting the requirements of CAA sections 110, 172, 191, and 192, and EPA's regulations at 40 CFR part 51, the

SIP for the affected area needs to demonstrate to EPA's satisfaction that each of the aforementioned requirements has been met. Under CAA sections 110(l) and 193, EPA may not approve a SIP that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement under the CAA. Furthermore, no requirement in effect, or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990, in any nonattainment area for any air pollutant, may be modified in any manner unless it ensures equivalent or greater emission reductions of such air pollutant.

III. Attainment Demonstration and Longer-Term Averaging

CAA sections 172(c)(1) and (6) direct states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. Forty CFR part 51, subpart G further delineates the control strategy requirements that SIPs must meet, and EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability. See General Preamble, at 13567–68. SO₂ attainment plans must consist of two components: (1) Emission limits and other control measures that assure implementation of permanent, enforceable, and necessary emission controls; and (2) a modeling analysis that meets the requirements of 40 CFR part 51, appendix W (the *Guideline on Air Quality Models*; "the *Guideline*") and demonstrates that these emission limits and control measures provide for timely attainment of the primary SO₂ NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (*i.e.*, a specific amount of emission reduction can be ascribed to the measures), fully enforceable (specifying clear, unambiguous, and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

EPA's April 2014 guidance recommends that the emission limits be expressed as short-term average limits (*e.g.*, addressing emissions averaged over one or three hours), but also describes the option to utilize emission limits with longer averaging times of up to 30 days so long as the state meets various suggested criteria. See April 2014 guidance, pp. 22 to 39. The guidance recommends that—should states and sources utilize longer averaging times—the longer-term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value shown to provide for attainment that the plan otherwise would have set.

The April 2014 guidance provides an extensive discussion of EPA's rationale for concluding that appropriately set comparably stringent limitations based on averaging times as long as 30 days can be found to provide for attainment of the 2010 SO₂ NAAQS. In evaluating this option, EPA considered the nature of the standard, conducted detailed analyses of how 30-day average limits impact attainment of the standard, and carefully reviewed how best to achieve an appropriate balance among the various factors that warrant consideration in judging whether a state's plan provides for attainment. *Id.* at pp. 22 to 39. See also *id.* at appendices B, C, and D.

As specified in 40 CFR 50.17(b), the 1-hour primary SO₂ NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour concentrations is less than or equal to 75 parts per billion. In a year with 365 days of valid monitoring data, the 99th percentile would be the fourth highest daily maximum 1-hour value. The 2010 SO₂ NAAQS, including this form of determining compliance with the standard, was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Nat'l Env't'l Dev. Ass'n's Clean Air Project v. EPA*, 686 F.3d 803 (D.C. Cir. 2012). Because the standard has this form, a single exceedance does not create a violation of the standard. Instead, at issue is whether a source operating in compliance with a properly set longer-term average could cause exceedances, and if so what the resulting frequency and magnitude of such exceedances will be, and in particular whether EPA can have reasonable confidence that a properly set longer-term average limit will provide that the average fourth highest daily maximum value will be at or below 75 ppb. A synopsis of how EPA judges whether such plans

“provide for attainment,” based on modeling of projected allowable emissions and in light of the form of the NAAQS for determining attainment at monitoring sites, follows.

For plans for SO₂ based on 1-hour emission limits, the standard approach is to conduct modeling using fixed emission rates. The maximum emission rate that would be modeled to result in attainment (*i.e.*, in an “average year”¹ shows three, not four days with maximum hourly levels exceeding 75 ppb) is labeled the “critical emission value.” The modeling process for identifying this critical emission value inherently considers the numerous variables that affect ambient concentrations of SO₂, such as meteorological data, background concentrations, and topography. In the standard approach, the state would then provide for attainment by setting a continuously applicable 1-hour emission limit at this critical emission value.

EPA recognizes that some sources have highly variable emissions, for example due to variations in fuel sulfur content and operating rate, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that emissions for any given hour do not exceed the critical emission value. EPA also acknowledges the concern that longer-term emission limits can allow short periods with emissions above the critical emission value, which, if coincident with meteorological conditions conducive to high SO₂ concentrations, could in turn create the possibility of a NAAQS exceedance occurring on a day when an exceedance would not have occurred if emissions were continuously controlled at the level corresponding to the critical emission value. However, for several reasons, EPA believes that the approach recommended in our guidance document suitably addresses this concern. First, from a practical perspective, EPA expects the actual emission profile of a source subject to an appropriately set longer-term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. EPA expects this similarity because it has recommended that the longer-term average limit be set at a level that is comparably stringent to the otherwise

applicable 1-hour limit (reflecting a downward adjustment from the critical emission value) and that takes the source’s emission profile into account. As a result, EPA expects either form of emission limit to yield comparable air quality.

Second, from a more theoretical perspective, EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer-term limit, as compared to the likely air quality with the source having maximum allowable emissions under the comparable 1-hour limit. In this comparison, in the 1-hour average limit scenario, the source is presumed at all times to emit at the critical emission level, and in the longer-term average limit scenario, the source is presumed occasionally to emit more than the critical emission value but on average, and presumably at most times, to emit well below the critical emission value. In an “average year,” compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.*, three days with hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer-term limit, it is possible that additional exceedances would occur that would not occur in the 1-hour limit scenario (if emissions exceed the critical emission value at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances that would be expected in the 1-hour limit scenario would not occur in the longer-term limit scenario. This result arises because the longer-term limit requires lower emissions most of the time (because the limit is set well below the critical emission value), so a source complying with an appropriately set longer-term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

As a hypothetical example to illustrate these points, suppose a source always emits 1,000 pounds of SO₂ per hour and results in air quality at the level of the NAAQS (*i.e.*, results in a design value of 75 ppb). Suppose further that in an “average year,” these emissions cause the five highest maximum daily average 1-hour concentrations to be 100 ppb, 90 ppb, 80 ppb, 75 ppb, and 70 ppb. Then suppose that the source becomes subject to a 30-day average emission limit of 700 pounds per hour. It is theoretically possible for a source meeting this limit to have emissions that occasionally exceed 1,000 pounds per hour, but with

a typical emission profile, emissions would much more commonly be between 600 and 800 pounds per hour. In this simplified example, assume a zero background concentration, which allows one to assume a linear relationship between emissions and air quality. (A nonzero background concentration would make the mathematics more difficult but would give similar results.) Air quality will depend on what emissions occur during critical hours, but suppose that emissions at the relevant times on these 5 days are 800 pounds per hour, 1,100 pounds per hour, 500 pounds per hour, 900 pounds per hour, and 1,200 pounds per hour, respectively. (This is a conservative example because the average of these emissions, 900 pounds per hour, is well over the 30-day average emission limit.) These emissions would result in daily maximum 1-hour concentrations of 80 ppb, 99 ppb, 40 ppb, 67.5 ppb, and 84 ppb. In this example, the fifth day would have an exceedance that would not otherwise have occurred, but the third and fourth days would not have exceedances that otherwise would have occurred. In this example, the fourth highest maximum daily concentration under the 30-day average would be 67.5 ppb.

This simplified example illustrates the findings of a more complicated statistical analysis that EPA conducted using a range of scenarios using actual plant data. As described in appendix B of EPA’s April 2014 SO₂ nonattainment planning guidance, EPA found that the requirement for lower average emissions is highly likely to yield better air quality than is required with a comparably stringent 1-hour limit. Based on analyses described in appendix B of our April 2014 guidance, EPA expects that an emission profile with maximum allowable emissions under an appropriately set comparably stringent 30-day average limit is likely to have the net effect of having a *lower* number of exceedances and better air quality than an emission profile with maximum allowable emissions under a 1-hour emission limit at the critical emission value. This result provides a compelling policy rationale for allowing the use of a longer averaging period in appropriate circumstances where the facts indicate this result can be expected to occur.

The question then becomes whether this approach—which is likely to produce a lower number of overall exceedances even though it may produce some unexpected exceedances above the critical emission value—meets the requirement in section 110(a)(1) and 172(c)(1) and (6) for state implementation plans to “provide for

¹ An “average year” is used to mean a year with average air quality. While 40 CFR 50 appendix T provides for averaging three years of 99th percentile daily maximum values (*e.g.*, the fourth highest maximum daily concentration in a year with 365 days with valid data), this discussion and an example below uses a single “average year” in order to simplify the illustration of relevant principles.

attainment” of the NAAQS. For SO₂, as for other pollutants, it is generally impossible to design a nonattainment plan in the present that will guarantee that attainment will occur in the future. A variety of factors can cause a well-designed attainment plan to fail and unexpectedly not result in attainment, for example if meteorology occurs that is more conducive to poor air quality than was anticipated in the plan. Therefore, in determining whether a plan meets the requirement to provide for attainment, EPA’s task is commonly to judge not whether the plan provides absolute certainty that attainment will in fact occur, but rather whether the plan provides an adequate level of confidence of prospective NAAQS attainment. From this perspective, in evaluating use of a 30-day average limit, EPA must weigh the likely net effect on air quality. Such an evaluation must consider the risk that occasions with meteorology conducive to high concentrations will have elevated emissions leading to exceedances that would not otherwise have occurred, and must also weigh the likelihood that the requirement for lower emissions on average will result in days not having exceedances that would have been expected with emissions at the critical emission value. Additional policy considerations, such as in this case the desirability of accommodating real world emissions variability without significant risk of violations, are also appropriate factors for EPA to weigh in judging whether a plan provides a reasonable degree of confidence that the plan will lead to attainment. Based on these considerations, especially given the high likelihood that a continuously enforceable limit averaged over as long as 30 days, determined in accordance with EPA’s guidance, will result in attainment, EPA believes as a general matter that such limits, if appropriately determined, can reasonably be considered to provide for attainment of the 2010 SO₂ NAAQS.

The April 2014 guidance offers specific recommendations for determining an appropriate longer-term average limit. The recommended method starts with determination of the 1-hour emission limit that would provide for attainment (*i.e.*, the critical emission value), and applies an adjustment factor to determine the (lower) level of the longer-term average emission limit that would be estimated to have a stringency comparable to the otherwise necessary 1-hour emission limit. This method uses a database of continuous emission data reflecting the type of control that the source will be

using to comply with the SIP emission limits, which (if compliance requires new controls) may require use of an emission database from another source. The recommended method involves using these data to compute a complete set of emission averages, computed according to the averaging time and averaging procedures of the prospective emission limitation. In this recommended method, the ratio of the 99th percentile among these longer-term averages to the 99th percentile of the 1-hour values represents an adjustment factor that may be multiplied by the candidate 1-hour emission limit to determine a longer-term average emission limit that may be considered comparably stringent.² The guidance also addresses a variety of related topics, such as the potential utility of setting supplemental emission limits, such as mass-based limits, to reduce the likelihood and/or magnitude of elevated emission levels that might occur under the longer-term emission rate limit.

Preferred air quality models for use in regulatory applications are described in appendix A of EPA’s *Guideline on Air Quality Models*. In 2005, EPA promulgated AERMOD as the Agency’s preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (for example in estimating SO₂ concentrations) in all types of terrain based on extensive developmental and performance evaluation. On December 20, 2016, EPA revised the *Guideline*, which provided additional regulatory options and updated methods for dispersion modeling with AERMOD; the updates became effective on May 22, 2017. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO₂ standard is provided in appendix A to the April 23, 2014 SO₂ nonattainment area SIP guidance document referenced above. Appendix A of the guidance provides extensive guidance on the modeling domain, source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in this guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary SO₂ NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area

² For example, if the critical emission value is 1,000 pounds of SO₂ per hour, and a suitable adjustment factor is determined to be 70 percent, the recommended longer-term average limit would be 700 pounds per hour.

designated as nonattainment (*i.e.*, not just at the violating monitor) by using air quality dispersion modeling to show that the mix of sources and enforceable control measures and emission rates in an identified area will not lead to a violation of the SO₂ NAAQS. For a short-term (*e.g.*, 1-hour) standard, EPA believes that dispersion modeling using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area which may affect attainment in the area) is technically appropriate, efficient, and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of meteorological and emission source operating conditions that may contribute to peak ground-level concentrations of SO₂.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET. Estimated concentrations should include ambient background concentrations, should follow the form of the standard, and should be calculated as described in the August 23, 2010 clarification memo on “Applicability of Appendix W Modeling Guidance for the 1-hr SO₂ National Ambient Air Quality Standard.”

IV. Review of Modeled Attainment Plan

The following discussion evaluates various features of the modeling that New Hampshire used in its attainment demonstration.

A. Model Selection and Modeling Components

New Hampshire’s attainment demonstration used EPA’s preferred model AERMOD (version 15181) with default options (*e.g.*, without use of the ADJ U* option) and rural dispersion coefficients for this application. The AERMOD modeling system contains the following components:

- AERMOD: The dispersion model
- AERMAP: The terrain processor for AERMOD
- AERMET: The meteorological data processor for AERMOD
- BPIP-PRIME: The building input processor
- AERMINUTE: A pre-processor to AERMET incorporating 1-minute automated surface observation system (ASOS) wind data
- AERSURFACE: The surface characteristics processor for AERMET
- AERSCREEN: A screening version of AERMOD

For any dispersion modeling exercise, the “urban” or “rural” determination of

a source is important in determining the boundary layer characteristics that affect the model's prediction of downwind concentrations. For SO₂ modeling, the urban/rural determination is important because AERMOD invokes a 4-hour half-life for urban SO₂ sources.

To investigate whether the rural determination was correct, EPA examined aerial imagery within 3 km of the facility and classified land use within the total area, as described in section 7.2.1.1 of the *Guideline*. Using this approach, EPA found that less than 50 percent of the land use in the area reflected urban characteristics, and that therefore, consistent with the State's selection, rural dispersion characteristics were most appropriate for use in this assessment.

The State used AERMOD version 15181, the most up-to-date version at the time the area was modeled, using all regulatory default options. AERMOD version 16216r has since become the regulatory model version. There were no updates from 15181 to 16216r that would significantly affect the concentrations predicted here.

The ADJ_U* option, which adjusts the minimum surface roughness velocity under stable, low-wind speed conditions, was not invoked by the State. Not invoking ADJ_U*, as in the demonstration submitted by New Hampshire, may result in higher modeled concentrations; therefore, this element of the model option selection is conservative (*i.e.*, unlikely to underpredict concentrations).

EPA finds this selection appropriate because this model version using default options is sufficiently up to date, the rural option selection is in line with site characteristics, and the selection of default surface roughness velocity characteristics (*i.e.*, no ADJ_U*) is not expected to underpredict concentrations.

B. Area of Analysis

New Hampshire accounted for SO₂ impacts in the modeling domain, which extends in a 50 km radius around Merrimack Station and includes both locations within and outside of the nonattainment area, through the inclusion of measured background levels and explicitly modeled emission sources. The only source New Hampshire included explicitly in the modeling was Merrimack Station. In the narrative of the January 31, 2017 SIP submittal, New Hampshire indicated that other emitters of SO₂ were accounted for in the background levels monitored within the nonattainment area. (The approach for developing the monitored background levels is

described in detail in section IV.H, below.) In the submittal, New Hampshire also identified sources with annual emissions greater than 100 tons SO₂ per year outside of the nonattainment area. Specifically, in the submission to EPA, New Hampshire identified Schiller Station and Newington Station, which are both located in the New Hampshire seacoast area approximately 55 km to the east southeast of Merrimack Station, as the principal nearby emitters of over 100 tons SO₂ annually. Schiller and Newington stations are each located about 30 km from the boundary of the nonattainment area.

For the purpose of ensuring that no other sources of SO₂ were inappropriately excluded in New Hampshire's modeling, EPA reviewed its 2014 National Emissions Inventory (NEI), version 1 for sources within or nearby to the nonattainment area. During this review, EPA identified one additional source in the region that has emitted greater than 100 tons of SO₂ annually, though not within the Central New Hampshire Nonattainment Area. The source, Monadnock Paper Mills Inc. (Monadnock Paper), a pulp and paper facility located in Bennington, New Hampshire approximately 40 km to the southwest of Merrimack Station and 24 km from the closest portion of the nonattainment area, emitted 148 tons SO₂ in 2014 according to the 2014 NEI.

EPA examined whether Monadnock Paper might have an influence on the nonattainment area. The main criterion described in section 8.3 of the *Guideline* for establishing whether a secondary source is adequately represented by ambient monitoring data is whether that secondary source causes a significant concentration gradient in the vicinity of the primary source under consideration. In this context, secondary sources that do not cause a significant concentration gradient are typically considered to be adequately represented in the monitored ambient background. Based on the magnitude of emissions and distance relative to the nonattainment area, EPA believes it is unlikely that Monadnock Paper will cause a significant concentration gradient within the nonattainment area and has concluded that Monadnock Paper is adequately represented in the monitored ambient background.

To examine the possible influence of other sources on the nonattainment area, EPA considered the most recent modeling assessment for Schiller and Newington stations provided by New Hampshire to EPA in February 2017 for purposes of SO₂ designations. That modeling and EPA's evaluation of it are

described in detail in the New Hampshire technical support document for EPA's intended designations for the 2010 SO₂ NAAQS, for which EPA sent letters to states on August 22, 2017. Based on this information, EPA found no significant concentration gradient due to emissions from Schiller Station or Newington Station within the nonattainment area and has concluded that both stations are adequately represented in the monitored ambient background.

Additionally, EPA believes that the background levels reasonably account for other sources influencing air quality within the nonattainment area because data used to develop background levels include hours during which those sources may have impacted the monitors.

Therefore, based on the reasoning provided in the preceding paragraphs, EPA concludes that the State appropriately accounted for these other sources through the inclusion of monitored background concentrations (see section IV.H below).

C. Receptor Grid

Within AERMOD, air quality concentration results are calculated at discrete locations identified by the user; these locations are called receptors. The receptor placement for the area of analysis selected by the State is a network of polar grids centered on Merrimack Station to a distance of 50 km in all directions. Polar grid radii were spaced at 10 degree intervals. Receptors were placed every 20 meters along the perimeter of and excluded within the facility. Polar receptors along the radii were spaced as follows:

- 20-meter spacing to 200 meters;
- 50-meter spacing from 200 meters to 500 meters;
- 100-meter spacing from 500 meters to 2 km;
- 250-meter spacing from 2 km to 10 km;
- 500-meter spacing from 10 km to 30 km; and
- 1,000-meter spacing from 30 km to 50 km.

In addition to the 4,349 receptors included in the description above, the State included 2,308 additional receptors in dense Cartesian arrays with 100-meter spatial resolution, over areas of expected maximum predicted concentrations based on preliminary modeling. Specifically, this was done in areas of complex terrain features at distances between 5 and 15 km of Merrimack Station.

The receptor network contained a total of 6,657 receptors, covering a

circular area of 50 km in radius, including the entirety of the nonattainment area. EPA finds that the modeling domain and receptor network are sufficient to identify maximum impacts from Merrimack Station, and are therefore adequate for characterizing the nonattainment area.

D. Meteorological Data

New Hampshire used AERMOD's meteorological data preprocessor AERMET (version 15181) with 2 years of surface and concurrent upper air meteorological data. The State relied on site-specific surface observations collected at Merrimack Station in Bow, New Hampshire during the 23-month period from January 1994 through November 1995 at five meteorological tower measurement levels and fifteen SODAR (Sound Detection and Ranging) levels. In addition, the State used surface observations from the National Weather Service (NWS) station at Concord Municipal Airport in Concord, New Hampshire (WBAN Station No. 14745) in the following ways: (1) To supplement site-specific surface data with additional parameters (sky cover, ceiling height, and surface pressure) not available in the site-specific meteorological data, (2) to substitute for missing site-specific wind observations (51 hours of the 16,776 hours of the 23 month period), and (3) to extend the meteorological dataset through December 1995 to develop a full 2-year analysis period. Concord Municipal Airport is approximately 7 km to the north-northwest of Merrimack Station. The State used coincident upper air observations from different NWS stations located in Portland, Maine (WBAN Station No. 14764) from January 1, 1994 through September 21, 1994, and Gray, Maine (WBAN Station No. 54762) from September 22, 1994 through December 31, 1995. (The Portland station ceased its upper air observations on September 22, 1994, when the Gray station began its upper air observations.) The Portland station is around 110 km to the northeast of Merrimack and the Gray station is around 130 km to the northeast of Merrimack.

New Hampshire also considered the use of more recent (2008–2012) NWS data collected at Concord Municipal Airport. The State cited two potential advantages of using this alternative dataset, mainly that it was significantly newer and included data derived from 1-minute resolution observations using the AERMINUTE preprocessor to AERMET. New Hampshire weighed these considerations against the advantages of using the 1994–1995 site-

specific data, specifically: (1) The observation height for the site-specific data is closer in height to the stacks at Merrimack Station than the 8 meter collection height for the NWS data; (2) the site-specific wind direction data are more representative of the channeling effect within the Merrimack River valley in the location of Merrimack Station; and (3) use of the site-specific data would be consistent with previous modeling of Merrimack, which relied on the site-specific meteorology.

EPA concurs with the choice of surface and upper air meteorological data inputs as being appropriately representative of site-specific meteorology. Specifically, EPA has judged the representativeness of the measured surface meteorological data according to the following four factors, as listed in section 8.4.1(b) to the *Guideline*: (1) The proximity of the meteorological monitoring site to the area under consideration, (2) the complexity of the terrain, (3) the exposure of the meteorological monitoring site, and (4) the period of time during which data are collected. Regarding proximity (factor 1), the site-specific data is preferred over the more distant NWS data, though both data sources are sufficiently close to be appropriately representative of the site. Regarding the complexity of terrain (factor 2), both Concord and the site-specific location show wind flow patterns with predominant northwest flow and secondary southeast flows, but the site-specific data show a more pronounced valley channeling effect with fewer hours with wind flow in other directions. In terms of exposure of the site, neither location appears to be exposed in a way that would have biased data collection (factor 3). Finally, regarding the data collection time period (factor 4), the more recent data at the NWS station would allow for use of 1-minute resolution data for more accurate wind data inputs, and would be preferred for this factor.

Notwithstanding the age of the onsite data, current land-use is comparable to historical land-use, so that the historic meteorological data are sufficiently representative of current conditions. In summary, based on the four factors described above, despite the availability of recent nearby NWS data, the analysis suggests that the 1994–1995 site-specific data augmented with NWS data are more representative of conditions pertinent to releases at Merrimack Station. The 23 months of site-specific data supplemented with 1 additional month of NWS data represent an appropriate study period, consistent

with EPA guidance contained in section 8.4.2(e) of the *Guideline*, which states that at least 1 year of site-specific meteorological data are required to ensure that worst-case meteorological conditions are adequately represented in the model results. The upper air stations selected for the analysis are the closest sites and are suitably representative of the upper air in the Central New Hampshire Nonattainment Area, and are therefore most appropriate for developing upper air profiles for the State's modeling analysis.

The State used AERSURFACE version 13016 using land cover data from the 1992 National Land Cover Dataset (NLCD) for both surface data collection locations to estimate the surface characteristics (albedo, Bowen ratio, and surface roughness length) of the area of analysis. The State estimated surface roughness length values for 12 spatial sectors out to the recommended radius of 1 km at a monthly temporal resolution for average surface moisture conditions. EPA concurs with New Hampshire's approach to developing relevant surface characteristics for use in processing meteorological data for this area.

E. Source Characterization

EPA also reviewed the State's source characterization in its modeling assessment, including source types, use of accurate stack parameters, and inclusion of building dimensions for building downwash. The State's source characterization in its modeling demonstration was consistent with the recommendations included in the *Guideline*. The source used actual stack height (445 feet), which EPA determined to be good engineering practice (GEP) height using BPIP-PRIME. The State also adequately characterized the source's building layout and location, as well as the stack parameters, e.g., exit temperature, exit velocity, location, and diameter. EPA verified the position of buildings and stacks using aerial imagery and relevant stack parameters based on permit conditions.

F. Emissions Data

New Hampshire included maximum allowable 1-hour emissions from Merrimack Station in its modeled attainment demonstration for the Central New Hampshire Nonattainment Area. The State indicated that SO₂ air quality in the area is almost entirely characterized by emissions from the two primary boilers at Merrimack Station, and this informed the State's decision to only explicitly model SO₂ emissions from Merrimack Station. Additional

units (*i.e.*, two peak combustion turbines, an emergency generator, an emergency boiler, and a fire pump) at Merrimack Station operate infrequently and were treated as intermittent sources; therefore, they were excluded from the modeling.³ The State provided historical (2011–2014) counts of hours of operation for these units to bolster its contention that these units do not contribute to the annual distribution of daily maximum 1-hour concentrations. Specifically, during the 2011–2014 period, the two turbines were operated during an average of 40 and 45 hours per year, the emergency generator during an average of 17 hours per year, the emergency boiler during an average of 43 hours per year, and the fire pump during an average of 3 hours per year. The maximum annual usage of any of these pieces of equipment during that time was 114 hours for combustion turbine 1 in 2014. The emergency generator is limited through section Env-A 1311.02(a) of New Hampshire's SIP-approved air pollution control regulations, to a maximum of 500 hours of operation during any consecutive 12-month period. The fire pump is limited to a maximum of 100 hours for maintenance and testing during any consecutive 12-month period because it is subject to EPA's New Source Performance Standards for stationary internal combustion engines, specifically 40 CFR 60.4211(e). These utilization levels and patterns are consistent with EPA's assessment of intermittent emissions based on the March 1, 2011 EPA guidance. EPA believes that this treatment is appropriate for those units in this area.

New Hampshire provided attainment modeling used to support its establishment of emission rates for Merrimack Station. In establishing the emission limits, the State followed EPA's April 2014 guidance by using modeling to develop a critical emission value and adjustment factor to establish a longer term limit for Merrimack. The State modeled three "normal operating scenarios," comprised of one scenario with maximum operation of both utility boilers (scenario 1), and two other scenarios with maximum operation of each boiler individually (scenarios 2 and 3, respectively). In 2011, New

Hampshire issued a permit (TP–0008) for Merrimack Station that contained, among other things, SO₂ emission limits associated with a flue gas desulfurization (FGD) system. The FGD was required to be installed at Merrimack Station by the New Hampshire legislature. See New Hampshire Revised Statutes Annotated (RSA) 125–O:11. EPA approved the SO₂-related source-specific requirements of that permit into the New Hampshire SIP as part of the State's regional haze SIP submittal. See 77 FR 50602 (August 22, 2012). In September 2016, New Hampshire issued a second permit (TP–0189) for Merrimack Station, which included SO₂ emission limits specifically designed to ensure compliance with the SO₂ NAAQS. The emission limits included in TP–0189, and which New Hampshire has proposed for inclusion in the State's SIP, apply at all times. The State's modeling established a critical emission value of 2,544 pounds (lb) SO₂ per hour for scenario 1, which the State concluded is comparably stringent to a 7-boiler operating day rolling average limit of 0.39 lb SO₂ per million British thermal units (MMBtu). The 7-boiler operating day rolling average emissions limits that would be comparably stringent to the 1-hour critical emission value under scenarios 2 and 3 would be 0.92 and 0.47 lb SO₂/MMBtu, respectively. Because scenario 1 was the basis for establishing this limit, and the limit (0.39 lb/MMBtu) is more stringent than the limits that would have been established for either scenario 2 or 3 (0.92 and 0.47 lb/MMBtu, respectively), using emissions from scenario 1 as the basis of the modeling analysis is appropriate. See section IV.G.2 below for further details on the emissions in the State's attainment modeling, including discussion of the State's conclusion of comparable stringency with the critical emission value.

In summary, EPA concurs with the State's selection in its attainment demonstration modeling of emissions from utility boilers at Merrimack Station, and exclusion of additional emission sources at Merrimack due to their intermittent operation.

G. Emission Limits

An important prerequisite for approval of a nonattainment plan is that the emission limits that provide for attainment be quantifiable, fully enforceable, replicable, and accountable. See General Preamble at 13567–68. The limits that New Hampshire's plan relies on for Merrimack Station are expressed as 7-boiler operating day rolling average

limits, where a boiler operating day is defined as a 24-hour period that begins at midnight and ends the following midnight during which any fuel is combusted at any time in the boiler; it is not necessary for the fuel to be combusted for the entire 24-hour period. Therefore, part of the review of New Hampshire's nonattainment plan must address the use of these limits, both with respect to the general suitability of using such limits for this purpose and with respect to whether the particular limits included in the plan have been suitably demonstrated to provide for attainment. The first subsection that follows addresses the enforceability of the limits in the plan, and the second subsection that follows addresses in particular the 7-boiler operating day average limits.

1. Enforceability

On September 1, 2016, New Hampshire issued a permit, TP–0189, to Public Service of New Hampshire d/b/a Eversource Energy for Merrimack Station. The permit became effective and enforceable upon issuance, and was issued pursuant to RSA 125–C:11. These requirements are more stringent than the applicable measures for the facility, which require 90% reduction for both MK1 and MK2, as incorporated into the SIP by reference to Table 4, Items 6 and 8 of TP–0008. EPA considers the 30-boiler operating day limits included in TP–0189 (specifically, Table 4, Item 2) to supersede the conditions specified in Table 4, Items 6 and 8 of TP–0008.

Monitoring, testing, and recordkeeping requirements related to all of the permit's SO₂ emission limits are clearly described in the permit and ensure that the limits are quantifiable, fully enforceable, and replicable. The accountability of the limits is established through the State's inclusion of the permit limits in its nonattainment plan, and its modeling demonstration using the 1-hour emission levels that are comparably stringent to the permit limits. In accordance with EPA policy, the 7-boiler operating day average limit for Merrimack Station is set at a lower level than the critical emission value used in the attainment demonstration; the relationship between these two values is discussed in more detail in the following section.

2. Longer-Term Average Limits

New Hampshire developed a critical emission value for each of the three normal operating scenarios (see section IV.F above) using a target concentration threshold of 183.2 micrograms per cubic meter (µg/m³) by subtracting a background value of 12.8 µg/m³, the

³ The March 1, 2011 EPA memorandum from Tyler Fox to EPA Regional Air Division Directors entitled "Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO₂ National Ambient Air Quality Standard," which also includes information relevant to modeling for SO₂, addresses treatment of intermittent sources. This guidance indicates that air permitting authorities have discretion to exclude certain types of intermittent emissions for modeling the 1-hour NAAQS on a case-specific basis.

highest hour-by-season background value (see section IV.H below), from 196 $\mu\text{g}/\text{m}^3$, which is equivalent to the level of the NAAQS of 75 ppb.⁴ The State then divided the target concentration threshold by the maximum predicted 99th percentile concentration using a unit emission rate (*i.e.*, 1 lb/hr) for each normal operating scenario to establish the critical emission value for each scenario (*e.g.*, 2,544 lb/hr, equivalent to a limit of 0.54 lb/MMBtu at full operating load, for scenario 1).

Using hourly emission data provided by EPA's Air Markets Program Data database for Merrimack Station for the period between July 4, 2013 and March 30, 2015 (*i.e.*, since the FGD system became operational), the State derived adjustment factors for longer-term averaging periods for each scenario. Because the dataset includes only data from Merrimack Station using the control technology, it is appropriate for use in developing adjustment factors. Prior to deriving the adjustment factors, the State removed erroneous data points from the dataset based on information provided by the facility. The adjustment factors were calculated as the ratio of the 99th percentile of mass emissions for the longer-term period to the 99th percentile hourly mass emissions. For the rolling 7-day averaging period, the adjustment factor was 0.73 for each of the three scenarios. That is, the 7-day mass emission rate limit would need to be 0.73 times (or 27% lower than) the critical emission value to have comparable stringency as a 1-hour rate limit. The 7-day adjustment factor of 0.73 for Merrimack Station is similar to 0.71, EPA's average 30-day adjustment factor for sources with wet scrubbers (derived from a database of 210 sources) as listed in appendix D of the April 2014 guidance. The State then derived emission limits for each scenario on an emission per heat-input basis, and selected the lowest level for the 7-day averaging period of 0.39 lb/MMBtu.

Based on a review of the State's submittal, EPA believes that the 7-boiler operating day average limit for Merrimack Station provides a suitable alternative to establishing a 1-hour average emission limit for this source. The State has used a suitable database in an appropriate manner and has thereby applied an appropriate adjustment, yielding an emission limit that has comparable stringency to the 1-

hour average limit that the State determined would otherwise have been necessary to provide for attainment. While the 7-boiler operating day average limit allows occasions in which emissions may be higher than the level that would be allowed with the 1-hour limit, the State's limit compensates by requiring average emissions to be lower than the level that would otherwise have been required by a 1-hour average limit. For the reasons described above and explained in more detail in EPA's April 2014 guidance for SO₂ nonattainment plans, EPA finds that appropriately set longer-term average limits provide a reasonable basis by which nonattainment plans may provide for attainment. Based on our review of this general information as well as the particular information in New Hampshire's plan, EPA finds that the 7-boiler operating day average limit for Merrimack Station will provide for attainment of the SO₂ NAAQS.

In the April 2014 guidance for SO₂, EPA also described possible supplemental limits on the frequency and/or magnitude of elevated emissions to strengthen the justification for the use of longer-term average limits to protect against NAAQS violations. One option provided in the guidance regarding this topic is the use of relatively shorter averaging times, which provide less allowance of emission spikes than would longer averaging times, *i.e.*, the 30-day averaging time. In this instance, the emission limit for Merrimack Station is on a 7-boiler operating day average basis and the limit applies at all times. Furthermore, the adjustment factor used to derive the limit is similar to 0.71, EPA's average 30-day adjustment factor for sources with wet scrubbers as listed in appendix D of the April 2014 guidance, meaning that the factor used to adjust the emission limit downward is more pronounced for a 7-day period than would typically be expected. Based on these considerations, EPA believes that the 7-boiler operating day limits are sufficiently protective of the NAAQS without application of an additional, supplemental limit.

H. Background Concentrations

To develop background concentrations for the nonattainment area, the State of New Hampshire relied on 2012–2014 data from two monitors within the nonattainment area: The Pembroke monitor, Air Quality System (AQS) number 33–013–1006, and the Concord monitor, AQS number 33–013–1007. The Pembroke monitor is located on Pleasant Street in Pembroke, New Hampshire, about 1.3 km to the

southeast of Merrimack Station, and the Concord monitor is located at Hazen Drive in Concord, New Hampshire, about 9.4 km to the north-northwest of Merrimack Station. Each of these monitors was sited to record neighborhood scale exposure levels rather than regional background levels; there are currently no regional background monitors in the Central New Hampshire Nonattainment Area. Per section 8.3.1.a of the *Guideline*, background air quality should not include the ambient impacts of the source under consideration. Both the Pembroke and Concord monitors reflect impacts attributable to Merrimack Station. One solution to develop background concentrations from monitoring data around an isolated source, as described in section 8.3.2.c.i of the *Guidance*, is to exclude monitor measurements collected when wind is from a 90° sector centered on the source. Due to the low wind speeds and swirling winds characteristic of Merrimack Station's river valley location, emissions from the source may contribute to the monitors even when the wind direction is outside of the 90° sector. Therefore, the State determined that the 90° exclusion sector approach was not appropriate for this application, and selected an alternative approach to develop background levels. Specifically, the State compiled an ambient concentration database using the lower observed value for the two monitors' hourly values as representing regional background levels. This approach accounts for area and mobile sources and more distant sources that were not modeled explicitly but affect SO₂ levels in the nonattainment area without also double-counting impacts from Merrimack Station, which was modeled explicitly. Using this approach, EPA finds the State's treatment of SO₂ background levels to be suitable for the modeled attainment demonstration.

I. Summary of Results

The modeling analysis upon which the State relied in establishing a critical emission value for setting emission limits for Merrimack Station results in concentrations of no greater than 196.0 $\mu\text{g}/\text{m}^3$, which is below the level of the 1-hour primary SO₂ NAAQS of 196.4 $\mu\text{g}/\text{m}^3$. EPA agrees with the State that these results indicate that emissions at the critical emission value for Merrimack Station provide for attainment of the 1-hour SO₂ NAAQS.

⁴ Using a numerical conversion factor of 2.619 $\mu\text{g}/\text{m}^3$ per ppb, the 2010 SO₂ NAAQS of 75 ppb is equivalent to 196.4 $\mu\text{g}/\text{m}^3$. The state rounded 196.4 $\mu\text{g}/\text{m}^3$ down to a more protective level of 196 $\mu\text{g}/\text{m}^3$. EPA is using the lower value in this case because it is consistent with the State's analysis and is also protective of the NAAQS.

V. Review of Other Plan Requirements

A. Emissions Inventory

The emissions inventory and source emission rate data for an area serve as the foundation for air quality modeling and other analyses that enable states to: (1) Estimate the degree to which different sources within a nonattainment area contribute to violations within the affected area; and (2) assess the expected improvement in air quality within the nonattainment area due to the adoption and implementation of control measures. As noted above, the State must develop and submit to EPA a comprehensive, accurate, and current inventory of actual emissions from all sources of SO₂ emissions in each nonattainment area, as well as any sources located outside

the nonattainment area which may affect attainment in the area. See CAA section 172(c)(3).

In its plan, New Hampshire included a current emissions inventory for the nonattainment area and also for the three-county area of Hillsborough, Merrimack, and Rockingham Counties based on the 2011–2015 period. The State principally relied on 2014 as the most complete and representative record of annual SO₂ emissions because it coincided with EPA’s National Emissions Inventory (NEI), which includes a comprehensive inventory of all source types. The State allocated 2014 NEI version 1 emissions from the portion of each county within the nonattainment area using city- and town-level population (for area and non-

road mobile sources) and vehicle miles traveled (VMT; for on-road mobile sources) statistics. The State included emissions from point sources (e.g., Merrimack Station) to the area based on location. The State calculated emissions for the area from some types of sources based on county-level emissions. A summary of the State’s emissions inventories for 2011, 2014, and 2018 are presented in Table 1. Based on the State’s inventory, of the 5,471 tons SO₂ emitted in 2014 within the three county area, 1,480 tons were emitted within the nonattainment area. Merrimack Station emitted 1,044 tons SO₂ in 2014. These emissions levels are much lower than historical emissions levels; for example, in 2011, Merrimack Station emitted 22,420 tons SO₂.

TABLE 1—SUMMARY OF NEW HAMPSHIRE’S INVENTORY OF ACTUAL SO₂ EMISSIONS FOR THE CENTRAL NEW HAMPSHIRE AREA

Year	Hillsborough, Merrimack, and Rockingham Counties (tons)	Central New Hampshire non-attainment area (tons)	Merrimack Station (tons)
2011	24,934	22,398	22,420
2014	5,471	1,480	1,044
2018 (projected)	6,966	2,473	1,927

New Hampshire also developed a projected emission inventory for the 2018 attainment year. The emissions projection indicates 1,927 tons of SO₂ from Merrimack Station and a total of 2,473 tons of SO₂ within the nonattainment area; however, these projections rely on a 90% reduction in SO₂ emissions from Merrimack Station, which is less stringent than the at least 93.4% reduction incorporated into the permit New Hampshire issued for Merrimack Station on September 1, 2016, TP–0189.

EPA agrees that the State’s emissions inventories are appropriate because they rely on well-established and vetted estimates of emissions for the current period and attainment year, respectively.

B. RACM/RACT

CAA section 172(c)(1) requires that each attainment plan provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) and shall provide for attainment of the NAAQS. EPA interprets RACM, including RACT,

under section 172, as measures that a state determines to be reasonably available and which contribute to attainment as expeditiously as practicable for existing sources in the area.

In its January 31, 2017 SIP submittal, New Hampshire identified the operational and SO₂ emission limits contained in Merrimack Station’s permit, TP–0189, as meeting RACM/RACT. New Hampshire’s plan for attaining the 1-hour SO₂ NAAQS in the Central New Hampshire Nonattainment Area is based on the operational and emission limitations contained in Merrimack Station’s permit. Specifically, Merrimack Station’s permit limits SO₂ emissions from the MK1 and MK2 boilers at Merrimack Station to 0.39 lb/MMBtu on a 7-boiler operating day rolling average (achieved through operation of the FGD), which the State demonstrated was comparably stringent to the critical emission value that provides for attainment of the NAAQS, as described in section IV.G.2 above. New Hampshire’s nonattainment plan includes the SO₂ control measures required by the permit, which was effective immediately upon issuance on September 1, 2016. New Hampshire has determined that these measures suffice to provide for timely attainment, and

plans to incorporate relevant conditions contained in TP–0189 into Merrimack’s title V operating permit (TV–0055).

The air modeling analysis submitted to EPA during the development of the SO₂ limits in TP–0189 confirms that these limits are protective of the NAAQS, as described in section IV. Because the modeling demonstrates attainment using emission limits contained in Merrimack Station’s permit, TP–0189, the State determined that controls for SO₂ emissions at Merrimack Station are appropriate in the Central New Hampshire Area for purposes of attaining the 2010 SO₂ NAAQS. Accordingly, New Hampshire only completed a RACM/RACT analysis for Merrimack Station because the air quality modeling showed that the SO₂ emission reductions required by TP–0189 will be sufficient to ensure that the nonattainment area achieves attainment with the SO₂ NAAQS. EPA believes that New Hampshire’s approach is consistent with EPA’s April 2014 guidance, which indicates that “[a]ir agencies should consider all RACM/RACT that can be implemented in light of the attainment needs for the affected area(s).”

The Central New Hampshire Area is currently showing an attaining design value for 2014–2016, and has been since

the 2012–2014 period, which means that attainment of the NAAQS is as expeditious as practicable.

Based on New Hampshire's modeling demonstration, which accounted for the SO₂ emission limits contained in Merrimack Station's permit, TP-0189, the Central New Hampshire Area is projected to attain the 2010 SO₂ NAAQS by the 2018 attainment date. Because the area is currently attaining the 2010 SO₂ NAAQS, EPA proposes to find that the control strategy will ensure attainment of the NAAQS by the required attainment date.

The State's plan also includes a broader discussion of the SO₂ control strategy beyond Merrimack Station's permit, TP-0189. Merrimack Station is also subject to requirements of the Mercury and Air Toxics Standards (MATS), which promotes reductions at subject facilities of certain hazardous air pollutants, including hydrochloric acid; such reductions are achieved at Merrimack Station through the operation of the FGD system, which concurrently reduces emissions of SO₂. New Hampshire also notes in its nonattainment plan the anticipated 73% reduction in SO₂ emissions among upwind states subject to EPA's Cross State Air Pollution Rule (CSAPR), which will lessen the contribution of sources from other states into the nonattainment area in future years. New Hampshire also described emissions reductions at Schiller Station as part of statewide efforts to reduce SO₂, as well as other state rules.

EPA concurs with New Hampshire's approach and analysis, and proposes to conclude that the State has satisfied the requirement in section 172(c)(1) to adopt and submit all RACM as needed to attain the SO₂ NAAQS as expeditiously as practicable.

C. New Source Review (NSR)

EPA last approved New Hampshire's Env-A 618 nonattainment new source review rules on May 25, 2017 (82 FR 24057). These rules provide for appropriate new source review for SO₂ sources undergoing construction or major modification in the Central New Hampshire Nonattainment Area without need for modification of the approved rules. Therefore, EPA concludes that this requirement has already been met for this area.

D. Reasonable Further Progress (RFP)

New Hampshire concluded that the appropriate control measures were implemented as expeditiously as practicable in order to ensure attainment of the standard by the applicable attainment date. Specifically,

the State implemented its main control strategy, *i.e.*, establishment of federally enforceable SO₂ emissions limits and operational conditions in TP-0189 for Merrimack Station in September 2016. New Hampshire concluded that this plan therefore provides for RFP in accordance with the approach to RFP described in EPA's guidance. EPA concurs and proposes to conclude that the plan provides for RFP.

E. Contingency Measures

As discussed in our guidance, Section 172(c)(9) of the CAA defines contingency measures as such measures in a SIP that are to be implemented in the event that an area fails to make RFP, or fails to attain the NAAQS, by the applicable attainment date. Contingency measures are to become effective without further action by the state or EPA, where the area has failed to (1) achieve RFP or (2) attain the NAAQS by the statutory attainment date for the affected area. These control measures are to consist of other available control measures that are not included in the control strategy for the nonattainment area SIP. EPA guidance describes special features of SO₂ planning that influence the suitability of alternative means of addressing the requirement in section 172(c)(9) for contingency measures for SO₂. Because SO₂ control measures are by definition based on what is directly and quantifiably necessary emissions controls, any violations of the NAAQS are likely related to source violations of a source's permit terms. Therefore, an appropriate means of satisfying this requirement for SO₂ is for the state to have a comprehensive enforcement program that identifies sources of violations of the SO₂ NAAQS and to undertake an aggressive follow-up for compliance and enforcement.

For its contingency program, New Hampshire proposed to continue to operate a comprehensive program to identify sources of violations of the SO₂ NAAQS and undertake aggressive compliance and enforcement actions, including expedited procedures for establishing consent agreements pending the adoption of the revised SIP. New Hampshire's program for enforcement of SIP measures for the 2010 SO₂ NAAQS was approved by EPA on June 15, 2016. *See* 81 FR 44542. As EPA stated in its April 2014 guidance, EPA believes that this approach continues to be a valid approach for the implementation of contingency measures to address the 2010 SO₂ NAAQS.

Based on the contingency measures identified by the State in its plan

submittal, EPA believes that New Hampshire's plan provides for satisfying the contingency measure requirement. EPA concurs and proposes to approve New Hampshire's plan for meeting the contingency measure requirement in this manner.

VI. Additional Elements of New Hampshire's Submittal

A. Conformity

The State addresses general conformity and transportation conformity requirements as they apply to the nonattainment area. Generally, as set forth in section 176(c) of the Clean Air Act, conformity requires that actions by federal agencies do not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS. General conformity applies to federal actions, other than certain highway and transportation projects, if the action takes place in a nonattainment area or maintenance area (*i.e.*, an area which submitted a maintenance plan that meets the requirements of section 175A of the CAA and has been redesignated to attainment) for ozone, particulate matter, nitrogen dioxide, carbon monoxide, lead, or SO₂. EPA's General Conformity Rule (40 CFR 93.150 to 93.165) establishes the criteria and procedures for determining if a federal action conforms to the SIP. With respect to the 2010 SO₂ NAAQS, federal agencies are expected to continue to estimate emissions for conformity analyses in the same manner as they estimated emissions for conformity analyses under the previous NAAQS for SO₂. EPA's General Conformity Rule includes the basic requirement that a federal agency's general conformity analysis be based on the latest and most accurate emission estimation techniques available (40 CFR 93.159(b)). When updated and improved emissions estimation techniques become available, EPA expects the federal agency to use these techniques. New Hampshire addresses general conformity under SIP-approved state rule Env-A 1500.

Federal Highway and Federal Transit Administration projects are subject to transportation conformity rather than general conformity requirements, with some exceptions. New Hampshire asserts in its plan that due to minimal impact on SO₂ from combustion of gasoline and diesel fuels, transportation conformity rules do not generally apply to SO₂ unless the EPA Regional Administrator or the state air director finds that its transportation-related SO₂ emissions are a significant contributor to fine particulate matter as a precursor.

This reasoning is consistent with EPA’s April 2014 guidance and EPA proposes to conclude that New Hampshire’s plan meets our guidance and rule requirements with regard to general and transportation conformity.

B. Changes in Allowable Emissions

The State quantified the changes in allowable emissions expected to result from implementation of its nonattainment area plan. To do so, the State compared allowable annual emissions at Merrimack Station prior to installation of the FGD control system with those after the system was operational and with those with the conditions of TP–0189 in place (*i.e.*, allowable emissions under the plan).

Prior to the effective date of TP–0189, under the conditions of TP–0008 (*see* 77 FR 50602), Merrimack Station was permitted to operate the MK1 boiler through the bypass stack (*i.e.*, now the emergency stack) for no more than 840 hours during any consecutive 12-month period and thereby bypass SO₂ controls; the MK2 boiler is unable to operate through the bypass stack. The State quantified emissions from these boilers which were allowed prior to installation of the FGD and the effective date of TP–0008. Then, the State quantified emissions from the MK1 and MK2 boilers under the provisions of TP–0008 (*i.e.*, using a 90% emissions reduction). Finally, the State quantified emissions for MK1 and MK2 allowed under the

provisions of TP–0189, *i.e.*, assuming an average of 0.39 lb/MMBtu. A summary of these allowable emissions is presented in Table 2. According to the plan, allowable annual SO₂ emissions prior to the FGD installation (and the conditions of TP–0008) were 82,537 tons, compared to 8,254 tons under the permit conditions of TP–0008, and 8,047 tons under the nonattainment plan (namely the SO₂ emissions limit for NAAQS compliance included in TP–0189). That is, the State expects implementation of the plan to allow 207 tons fewer than prior to plan implementation, and 74,490 tons fewer than prior to installation and operation of the FGD.

TABLE 2—SUMMARY OF ANNUAL ALLOWABLE SO₂ EMISSIONS FOR THE MK1 AND MK2 BOILERS AT MERRIMACK STATION

	Total allowable emissions	Difference in allowable emissions from prior to TP–0008 (tons)	Difference in allowable emissions from prior to TP–0189 (tons)
Prior to TP–0008	82,537		
With TP–0008	8,254	a – 74,283	
Nonattainment Area Plan (With TP–0189)	8,047	a – 74,489	a b – 206

^a Reported negative emissions values for differences indicate emission reductions.

^b New Hampshire reported a difference of 206 tons compared with the numerical difference of 207 tons between the reported total allowable emissions. This slight difference can be attributed to rounding.

C. Air Quality Trends

New Hampshire also included trends in ambient monitoring data for the nonattainment area. In its nonattainment plan, the State shows that ambient concentrations in the area have dropped markedly since 2011, when Merrimack Station began operation of its FGD system under the SIP-approved conditions of TP–0008, and are now below 75 ppb, the level of the NAAQS. The monitored design value for the Pembroke monitor (AQS number 33–013–1006), consistently the highest in the area, was 23 ppb for 2012 to 2014, and 20 ppb for both 2013 to 2015 and 2014 to 2016.

D. Compliance With Section 110(a)(2) of the CAA

Section 172(c)(7) of the CAA requires nonattainment SIPs to meet the applicable provisions of section 110(a)(2) of the CAA. While the provisions of 110(a)(2) address various topics, EPA’s past determinations suggest that only the section 110(a)(2) criteria linked with a particular area’s designation and classification are relevant to section 172(c)(7). This nonattainment SIP submittal satisfies all applicable criteria of section 110(a)(2) of the CAA, as evidenced by the State’s

nonattainment new source review program which addresses 110(a)(2)(I), the included control strategy, and the associated emissions limits which are relevant to 110(a)(2)(A). In addition, EPA approved the State’s SO₂ infrastructure SIP on May 25, 2017 (82 FR 24057). EPA will take action in a separate rulemaking on the remaining portion of the State’s infrastructure SIP, the so-called SO₂ “good neighbor” or “interstate transport” SIP to satisfy section 110(a)(2)(D)(i)(I) of the CAA. EPA is proposing to conclude that the State has met the requirements of 172(c)(7) of the CAA.

E. Equivalency Techniques

Section 172(c)(8) of the CAA states that upon application by any state, the Administrator may allow the use of equivalent modeling, emission inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the Administrator.

The State’s nonattainment SIP indicates that it followed existing regulations, guidance, and standard practices when conducting modeling, preparing the emissions inventories, and implementing its planning

procedures. Therefore, the State did not use or request approval of alternative or equivalent techniques as allowed under of the CAA and EPA is proposing to conclude that the State’s nonattainment SIP meets the requirements of section 172(c)(8) of the CAA.

VII. EPA’s Proposed Action

EPA has determined that New Hampshire’s SO₂ nonattainment plan meets the applicable requirements of sections 110, 172, 191, and 192 of the CAA. EPA is proposing to approve New Hampshire’s January 31, 2017 SIP submission for attaining the 2010 1-hour SO₂ NAAQS for the Central New Hampshire Nonattainment Area and for meeting other nonattainment area planning requirements. This SO₂ nonattainment plan includes New Hampshire’s attainment demonstration for the SO₂ nonattainment area. The nonattainment area plan also addresses requirements for RFP, RACT/RACM, enforceable emission limits and control measures, base-year and projection-year emission inventories, and contingency measures.

In the January 31, 2017 submittal to EPA, New Hampshire included the applicable monitoring, testing, recordkeeping, and reporting

requirements contained in Merrimack Station's permit, TP-0189, to demonstrate how compliance with Merrimack Station's SO₂ emission limit will be achieved and determined. EPA is proposing to approve into the New Hampshire SIP the provisions of Merrimack Station's permit, TP-0189, that constitute the SO₂ operating and emission limits and their associated monitoring, testing, recordkeeping, and reporting requirements. EPA is proposing to approve these provisions into the State's SIP through incorporation by reference, as described in section VIII, below. EPA's analysis is discussed in this proposed rulemaking.

EPA is not proposing to remove from the existing New Hampshire SIP, Table 4, items 6, 8, and 10 contained in Merrimack Station's July 2011 permit, TP-0008, because EPA has not received a request from the State to do so. *See* 52.1520(d) EPA-approved State Source specific requirements. However, EPA considers those provisions to be superseded by the conditions of TP-0189, which are more stringent, and which are to be incorporated into the SIP in this proposed action. Specifically, two of the provisions, items 6 and 8 from Table 4, relate to SO₂ emissions limits that have been superseded by Merrimack Station's September 2016 permit, TP-0189. Item 10 from Table 4 has also been superseded by Merrimack Station's September 2016 permit, TP-0189, in that the existing SIP provision allowed operation of one of Merrimack Station's two boilers, MK1, for up to 840 hours in any consecutive 12-month period through the emergency bypass stack, *i.e.*, not through the FGD. Each of the corresponding provisions of Merrimack Station's September 2016 permit, TP-0189, are more stringent than those existing SIP provisions. EPA is taking public comments for thirty days following the publication of this proposed action in the **Federal Register**. We will take all comments into consideration in our final action.

VIII. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference certain federally enforceable provisions of Merrimack Station's permit, TP-0189, effective on September 1, 2016. Specifically, the following provisions of that permit are proposed to be incorporated by reference: Items 1, 2, and 3 in Table 4 ("Operating and Emission Limits"); items 1 and 2 in

Table 5 ("Monitoring and Testing Requirements"); items 1 and 2 in Table 6 ("Recordkeeping Requirements"); and items 1 and 2 in Table 7 ("Reporting Requirements").

EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IX. Statutory and Executive Order Reviews

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

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

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: September 15, 2017.

Ken Moraff,

Acting Regional Administrator, EPA New England.

[FR Doc. 2017-20721 Filed 9-27-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2017-0213; FRL-9968-67-OAR]

RIN 2060-AT43

Protection of Stratospheric Ozone: Refrigerant Management Regulations for Small Cans of Motor Vehicle Refrigerant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing this action to correct an editing oversight that lead to a potential conflict in a prior rulemaking as to whether or not containers holding two pounds or less of non-exempt substitute refrigerants for use in motor vehicle air conditioning that are not equipped with a self-sealing valve can be sold to persons that are not certified technicians, provided those small cans were manufactured or imported prior to January 1, 2018. This action clarifies that those small cans may continue to be sold to persons that are not certified as technicians under sections 608 or 609 of the Clean Air Act. In the "Rules and Regulations" section of this **Federal Register**, EPA is publishing this action as a direct final

rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by October 30, 2017. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Daylight Time on October 5, 2017. If a public hearing is requested, the hearing will be held on or around October 13, 2017. If a hearing is held, it will take place at EPA headquarters in Washington, DC. EPA will post a notice on our Web site, www.epa.gov/section608, announcing further information should a hearing take place.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2017-0213, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sara Kemme by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205T), 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone: (202) 566-0511; or by email: kemme.sara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing this Proposed Rule?

On November 18, 2016, EPA published a rule finalizing a restriction that non-exempt substitute refrigerants may only be sold to technicians certified under sections 608 or 609 of the CAA (81 FR 82280). In the case of refrigerant for use in motor vehicle air conditioning (MVAC), EPA finalized the exemption

for the sale of certain small cans of non-ozone-depleting substitutes with a self-sealing valve to allow the do-it-yourself community to continue servicing their personal vehicles. However, the Agency did not finalize a sell-through provision as proposed. Instead, EPA intended to allow the continued sale of small cans without self-sealing valves that were manufactured or imported before January 1, 2018, and described that intent in the preamble to the final rule. See 81 FR 82280, 82342.

These intentions were also expressed in the regulatory text at 40 CFR 82.154(c)(2), which was revised in the November 2016 rule to state: “*Self-sealing valve specifications*. This provision applies starting January 1, 2018, for all containers holding two pounds or less of non-exempt substitute refrigerant for use in an MVAC that are manufactured or imported on or after that date. (i) Each container holding two pounds or less of non-exempt substitute refrigerant for use in an MVAC must be equipped with a single self-sealing valve that automatically closes and seals when not dispensing refrigerant” However, because of an editing error, another provision, 40 CFR 82.154(c)(1)(ix), contains text that could be construed as contradicting the Agency’s clearly expressed intent to allow non-technicians to purchase, and retailers to sell, small cans of refrigerant for use in MVAC that were manufactured or imported before the January 1, 2018, compliance date irrespective of whether they have a self-sealing valve.

The Automotive Refrigeration Products Institute and the Auto Care Association inquired about whether the language in 40 CFR 82.154(c)(1)(ix) effectively negates the provision in 40 CFR 82.154(c)(2) and the preamble discussion showing EPA’s intention to allow small cans of refrigerant for use in MVAC manufactured or imported before January 1, 2018, to continue to be sold without self-sealing valves. EPA is proposing this rule to revise the regulatory text so that persons in possession of small cans of refrigerant for use in MVAC without self-sealing valves that were manufactured or imported before January 1, 2018, can be assured that they will be able to sell off their existing inventories without disruption.

EPA has published a direct final rule making identical edits to the regulatory text as those proposed here in the “Rules and Regulations” section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have further explained our reasons for

this action in the preamble to the direct final rule. For additional information on the action being taken, see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. In that case, we would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. EPA is not proposing, and is not seeking comment on, any changes to the regulations at 40 CFR part 82, subpart F other than the proposed revisions discussed in this notice. For further information on how to submit comments, please see the information provided in the **ADDRESSES** section of this document.

II. Does this action apply to me?

Categories and entities potentially affected by this action include entities that distribute or sell small cans of refrigerant for use in MVAC. Regulated entities include, but are not limited to, manufacturers and distributors of small cans of refrigerant (NAICS codes 325120, 441310, 447110) such as automotive parts and accessories stores and industrial gas manufacturers.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations at 40 CFR part 82, subpart F. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

III. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities

contained in the existing regulations and has assigned OMB control number 2060–0256. These changes do not add information collection requirements beyond those currently required under the applicable regulations.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action clarifies that small cans of refrigerant for use in MVAC may be sold to persons who are not certified technicians even if they are not equipped with a self-sealing valve, so long as those small cans are manufactured or imported prior to January 1, 2018. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action corrects a potential conflict in the refrigerant management regulations as to whether or not small cans of refrigerant for use in MVAC could be sold to non-technicians if they were manufactured or imported prior to January 1, 2018, and do not have a self-sealing valve. This action clarifies that those small cans of refrigerant for use in MVAC may be sold to persons who are not certified technicians.

E. 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.

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

This action does not have tribal implications as specified in Executive Order 13175. This action corrects a potential conflict in the refrigerant management regulations as to whether or not small cans of refrigerant for use in MVAC could be sold to non-technicians if they were manufactured or imported prior to January 1, 2018, and do not have a self-sealing valve. Thus, Executive Order 13175 does not apply to this action.

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

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

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. 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).

This action does not affect the level of protection provided to human health or the environment. This action corrects a potential conflict in the refrigerant

management regulations as to whether or not small cans of refrigerant for use in MVAC could be sold to non-technicians if they were manufactured or imported prior to January 1, 2018, and do not have a self-sealing valve. This action clarifies that those small cans of refrigerant for use in MVAC may be sold to persons who are not certified technicians. The documentation for this decision is contained in Docket No. EPA–HQ–OAR–2017–0213, where EPA’s assessment of the underlying regulatory changes that necessitated this correction found no disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples.

List of Subjects in 40 CFR Part 82

Environmental protection, Air pollution control, Chemicals, Reporting and recordkeeping requirements.

Dated: September 21, 2017.

E. Scott Pruitt,
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 82 as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. In § 82.154, revise paragraph (c)(1)(ix) to read as follows:

§ 82.154 Prohibitions.

* * * * *

(c) * * *

(1) * * *

(ix) The non-exempt substitute refrigerant is intended for use in an MVAC and is sold in a container designed to hold two pounds or less of refrigerant, has a unique fitting, and, if manufactured or imported on or after January 1, 2018, has a self-sealing valve that complies with the requirements of paragraph (c)(2) of this section.

* * * * *

[FR Doc. 2017–20838 Filed 9–27–17; 8:45 am]

BILLING CODE 6560–50–P

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 22, 2017.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 30, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Food and Nutrition Service

Title: Study of Non-Response to the School Meals Application Verification Process.

OMB Control Number: 0584-New.

Summary of Collection: The National School Lunch Program (NSLP) and the School Breakfast Program (SBP) provide subsidized lunches and breakfasts to millions of students each school day. Students are certified eligible to receive free or reduced-price (F/RP) meals through application or direct certification. When eligibility is determined using an application process, school districts must annually verify eligibility of children from a sample of household applications for that school year, unless the State agency assumes responsibility for verification. This study will examine the accuracy of district verification procedures.

Need and Use of the Information: Collecting this data will help FNS to understand the approaches districts take to verification, understand the accuracy of the verification process and the results it produces in the context of potential changes, and help to identify potential improvements to the verification process.

Description of Respondents: State, Local, or Tribal Government; Individuals or Households.

Number of Respondents: 2,144.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 5,535.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017-20762 Filed 9-27-17; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Inviting Applications for Technical Assistance and Training Grants

AGENCY: Rural Development, Rural Utilities Service, USDA.

ACTION: Notice of Solicitation of Applications (NOSA).

SUMMARY: This Notice announces that the Rural Utilities Service (RUS) is accepting applications for the Technical

Assistance and Training Grant Program (TAT). RUS is providing an amount of funding to be determined to provide technical assistance and training grants for disaster recovery (TAT/DR) to RUS eligible water and sewer utilities serving areas subject to Presidential disaster declarations in effect on or after the date of this notice which are beyond the scope or capacity of existing grant agreements or contracts with the RUS and do not duplicate other federal assistance to water and sewer utilities in the affected areas. No single award will exceed \$600,000 and more than one grant may be made. Expenses incurred in developing applications will be at the applicant's risk. Once funding for TAT has been determined, RUS will publish the program funding level on the Rural Development Web site <https://www.rd.usda.gov/programs-services/water-waste-disposal-technical-assistance-training-grants>.

DATES: Applications for TAT/DR grant(s) must be received by October 18, 2017. Reminder of competitive grant application deadline: Applications must be submitted electronically through *Grants.gov* no later than 20 days after this announcement appears in the **Federal Register**.

ADDRESSES: You may submit electronic grant applications at <http://www.grants.gov/> (*Grants.gov*), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Anita O'Brien, Loan Specialist, Water Program Division, Rural Utilities Service, U.S. Department of Agriculture, by email at anita.obrien@wdc.usda.gov or by telephone: (202) 690-3789.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Technical Assistance and Training for Disaster Recovery (TAT/DR).

Announcement Type: Funding Level Announcement and Solicitation of Applications.

Authority: 7 U.S.C. 1926 (a)(14); Pub. L. 109-97, 119 Stat. 2120.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.761.

Dates: You must submit completed application for a TAT/DR grant before October 18, 2017.

Reminder of competitive grant application deadline: Applications must be submitted electronically through *Grants.gov* no later than 20 days after this announcement appears in the **Federal Register** to be eligible for funding.

Items in Supplementary Information

I. Funding Opportunity: Brief Introduction to the Technical Assistance and Training for Disaster Recovery (TAT/DR) Grants.

Drinking water and wastewater systems are basic and vital to both health and economic development. With dependable water facilities and environmentally sound waste disposal, rural communities can attract families and businesses that will invest in the community and improve the quality of life for all residents. Without dependable water and wastewater facilities, the communities cannot sustain economic development. RUS supports the sound development of rural communities and the growth of our economy without endangering the environment. RUS provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need.

The Technical Assistance and Training (TAT) Grant Program has been established under 7 CFR part 1775 to assist communities with water or wastewater systems through free technical assistance and/or training provided by the grant recipients. Qualified private non-profit organizations will receive TAT grant funds to identify and evaluate solutions to water and waste disposal problems in rural areas, assist applicants in preparing applications for water and waste grants made at the State level offices, and improve operation and maintenance of existing water and waste disposal facilities in rural areas.

II. Federal Award Information: Available funds, maximum amounts; \$1,000,000

III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility

IV. Application and Submission Information: Where to apply; what constitutes a completed application; how to submit applications; deadlines; and, items that are eligible

V. Application Review Information: Considerations and preferences; scoring criteria; review standards; and selection information

VI. Federal Award Administration Information: Award notice information

and award recipient reporting requirements

VII. Agency Contacts: Web, phone, email, and contact name

VIII. USDA Non-Discrimination Statement

I. Funding Opportunity

Drinking water and sewer systems are basic and vital to public health, the environment and economic development. Hurricanes, floods, forest fires and other natural disasters have severely damaged water systems in multiple states. Without dependable water supply, rural communities in these states will not attract families and businesses to return and invest in rural disaster damaged communities.

The Rural Utilities Service (RUS) supports rural prosperity, quality of life, economic development and stewardship of the environment. RUS provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need.

The additional funding made available under this notice for TAT/DR grants will allow rural communities to rebuild water and sewer infrastructure damaged by recent disasters and enhance the security of the RUS loan portfolio. Qualified private, non-profit organizations with expertise and a record of experience in providing technical assistance and training to RUS eligible water and sewer utilities may apply to receive a grant to provide technical assistance to RUS eligible water and sewer utilities in areas covered by a Presidential disaster declaration on or after the date of this notice. Grants are for disaster recovery related technical assistance, including such services as helping eligible rural water and sewer utilities complete Federal Emergency Management Administration (FEMA) claims, and file insurance recovery claims, address and cure outstanding delinquencies, and assisting new and returning RUS applicants prepare applications for water and waste disposal loans and grants as needed.

II. Award Information

Available funds: To be determined.

III. Eligibility Information

A. What are the basic eligibility requirements for applying?

An organization is eligible to receive a TAT grant if it:

a. Is a private, non-profit organization that has tax-exempt status from the U.S. Internal Revenue Service (IRS);

b. Is legally established and located within one of the following:

- A state within the United States
- the District of Columbia
- the Commonwealth of Puerto Rico
- a United States territory

c. Has the legal capacity and authority to carry out the grant purpose;

d. Has a proven record of successfully providing technical assistance and/or training to rural areas;

e. Has capitalization acceptable to the Agency, and is composed of at least 51 percent of the outstanding interest or membership being citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence;

f. Has no delinquent debt to the federal government or no outstanding judgments to repay a federal debt;

g. Demonstrates that it possesses the financial, technical, and managerial capability to comply with federal and State laws and requirements;

h. Contracts with a nonaffiliated organization for not more than 49 percent of the grant to provide the proposed assistance.

(For more specific information see 7 CFR 1775.35.)

The applying entity (Applicant) must:

1. Be a private, national, non-profit organization that has tax-exempt status from the United States Internal Revenue Service (IRS);

2. Be legally established and located within The United States of America;

3. Have the legal capacity and authority to carry out the grant purposes;

4. Have no delinquent debt to the Federal Government or no outstanding judgments to repay a Federal debt;

5. Have proven expertise and experience delivering technical assistance and training to RUS eligible water and sewer utilities.

B. What are the basic eligibility requirements for a project?

The qualified applicant must provide technical assistance to RUS eligible water and sewer utilities in rural areas covered by a Presidential disaster declaration existing on or after the date of this notice on disaster recovery related matters meeting the objectives and purposes of the program under 7 CFR part 1775.

IV. Application and Submission Information

A. Where to get application information: <http://www.grants.gov>.

B. Applicants will need a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.

You must provide your DUNS number on the SF-424, "Application for Federal Assistance." To verify that your organization has a DUNS number or to receive one at no cost, call the dedicated toll-free request line at 1-866-705-5711 or access the Web site <http://www.dunandbradstreet.com>. You will need the following information when requesting a DUNS number:

- a. Legal Name of the Applicant;
- b. Headquarters name and address of the Applicant;
- c. The names under which the Applicant is doing business as (dba) or other name by which the organization is commonly recognized;
- d. Physical address of the Applicant;
- e. Mailing address (if separate from headquarters and/or physical address) of the Applicant;
- f. Telephone number;
- g. Contact name and title;
- h. Number of employees at the physical location.

C. The application and any materials sent with it become Federal records by law and cannot be returned to you.

D. You must file an electronic application at the Web site: www.grants.gov. You must be registered with [Grants.gov](http://www.grants.gov) before you can submit a grant application. If you have not used [Grants.gov](http://www.grants.gov) before, you will need to register with the Central Contractor Registry (CCR) and the Credential Provider. You will need a DUNS number to access or register at any of the services. The registration processes may take several business days to complete. Follow the instructions at [Grants.gov](http://www.grants.gov) for registering and submitting an electronic application. RUS may request original signatures on electronically submitted documents later.

The CCR registers your organization, housing your organizational information and allowing [Grants.gov](http://www.grants.gov) to use it to verify your identity. You may register for the CCR by calling the CCR Assistance Center at 1-888-227-2423 or you may register online at: <http://www.ccr.gov>.

The Credential Provider gives you or your representative a username and password, as part of the Federal Government's e-Authentication to ensure a secure transaction. You will need the username and password when you register with [Grants.gov](http://www.grants.gov) or use [Grants.gov](http://www.grants.gov) to submit your application. You must register with the Central Provider through [Grants.gov](http://www.grants.gov): <https://apply.grants.gov/OrcRegister>.

E. What constitutes a completed application?

1. To be considered for assistance, you must be an eligible entity and must submit a complete application by the deadline date. You must consult the cost principles and general administrative requirements for grants pertaining to their organizational type in order to prepare the budget and complete other parts of the application. You also must demonstrate compliance (or intent to comply), through certification or other means, with a number of public policy requirements as demonstrated in the forms below.

2. Applicants must complete and submit the following forms to apply for a Technical Assistance and Training grant:

(a) Standard Form 424, "Application for Federal Assistance"

(b) Standard Form 424A, "Budget Information—Non-Construction Programs"

(c) Standard Form 424B, "Assurances—Non-Construction Programs"

(d) Standard Form LLL, "Disclosure of Lobbying Activity"

(e) AD-3030, "Representations Regarding felony Conviction and Tax Delinquent Status for Corporate Applicant"

(f) AD-3031, "Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicant"

(g) Form RD 400-1, "Equal Opportunity Agreement"

(h) Form RD 400-4, "Assurance Agreement (Under Title VI, Civil Rights Act of 1964)"

(i) Indirect Cost Rate Agreement (if applicable, applicant must include approved cost agreement rate schedule)

(j) Certification regarding Forest Service grant.

3. All applications shall be accompanied by the following supporting documentation in concise written narrative form:

(a) Evidence of applicant's legal existence and authority.

(b) Evidence of tax exempt status from the Internal Revenue Service (IRS).

(c) A short statement of applicant's experience in providing services similar to those proposed.

(d) A brief description of successfully completed projects including the need that was identified and objectives accomplished.

(e) The latest financial information to show the applicant's financial capacity to carry out the proposed work.

(f) A list of proposed services to be provided.

(g) An estimated breakdown of costs (direct and indirect) including those to

be funded by grantee as well as other sources. Sufficient detail should be provided to permit the approval official to determine reasonableness, applicability, and eligibility.

(h) Evidence that a Financial Management System is in place or proposed.

(i) A description of national reach and capability.

(ii) A description of the type of technical assistance and/or training to be provided and the tasks to be contracted.

(iii) A description of how the effectiveness and results of the proposed TAT/DR project will be measured.

(iv) A clear explanation of how the proposed services differ from other similar services being provided in the same area and measures to be taken to avoid duplication of federal effort.

(v) Number of personnel on staff or to be contracted to provide the service and their experience with similar projects.

(vi) A statement indicating the maximum number of months it would take to complete the project.

(vii) Explanation of the cost effectiveness of project.

4. Applicants must also submit a flexible work plan/project proposal that will outline the project in sufficient detail to provide a reader with a clear understanding of how the proposed TAT/DR project will address the technical assistance needs of RUS eligible water and sewer utilities in affected rural disaster areas that exist at the time of this notice or that may emerge during the term of the grant agreement.

5. The applicant must provide evidence of compliance with other federal statutes, including but not limited to the following:

i. Debarment and suspension information is required in accordance with 2 CFR part 417 (Nonprocurement Debarment and Suspension) supplemented by 2 CFR part 180, if it applies. The section heading is "What information must I provide before entering into a covered transaction with the Federal Government?" located at 2 CFR 180.335. It is part of OMB's Guidance for Grants and Agreements concerning Government-wide Debarment and Suspension.

ii. All of your organization's known workplaces by including the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Workplace identification is required under the drug-free workplace requirements in Subpart B of 2 CFR part 421, which adopts the Government-wide

implementation (2 CFR part 182) of the Drug-Free Workplace Act.

iii. 2 CFR parts 200 and 400 (Uniform Assistance Requirements, Cost Principles and Audit Requirements for Federal Awards).

iv. 2 CFR part 182 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)) and 2 CFR part 421 (Requirements for Drug Free Workplace (Financial Assistance)).

v. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." For information on limited English proficiency and agency-specific guidance, go to <http://www.LEP.gov>.

6. *Unique entity identifier and System for Award Management (SAM)*. The applicant for a grant must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number as part of an application. The Standard Form 424 (SF-424) contains a field for the DUNS number. The applicant can obtain the DUNS number free of charge by calling Dun and Bradstreet. Please see <http://fedgov.dnb.com/webform> for more information on how to obtain a

DUNS number or how to verify your organization's number.

In accordance with 2 CFR part 25, whether applying electronically or by paper, the applicant must register in the System for Award Management (SAM) prior to submitting an application.

Applicants may register for the SAM at <https://www.sam.gov/portal/SAM/#1>. The SAM registration must remain active with current information at all times while RUS is considering an application or while a Federal Grant award or loan is active. To remain registered in the SAM database the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete.

V. Application Review Information

A. RUS will acknowledge the application's receipt by email to the applicant. The application will be reviewed for completeness to determine if it contains all of the items required. If the application is incomplete or

ineligible, RUS will return it to the Applicant with an explanation. The RUS reserves the right to request additional information once an application is determined to be complete to address specific disaster recovery needs that are known or anticipated at the time of evaluation or to minimize the risk of duplication of other federal efforts. The RUS grant offer to a successful applicant will be based on the submitted application and may be more narrowly tailored than the submitted application to meet rural community needs at the time of the offer or over the course of the grant period.

B. A review team, composed of at least two members, will evaluate all applications and proposals. They will make overall recommendations based on factors such as eligibility, application completeness, and conformity to application requirements. They will score the applications based on criteria in paragraph C of this section.

C. All applications that are complete and eligible will be scored and ranked competitively. The categories for scoring criteria used are the following:

Scoring criteria	Points
1. Scope of Assistance	Up to 15.
2. Degree of expertise	Up to 15.
3. Applicant Resource (staff and contract personnel)	Up to 10.
4. Goals/Objectives: Goals/objectives are clearly defined and tied to need, results and measurable outcomes	Up to 10.
5. Extent to which the work plan clearly articulates a well thought out approach to accomplishing objectives; and clearly defines how the applicant would respond to communities served by the TAT/DR grant.	Up to 20.
6. Financial Controls	Up to 5.
7. Type of technical assistance applicant is providing	Up to 20.
8. Project duration	Up to 5.

VI. Award Administration Information

A. RUS will rank all qualifying applications by their final score. Applications will be selected for funding based on the highest scores. No grant will exceed \$600,000. The agency expects to award a small number of grants under this notice. The agency reserves the right to make no grant awards if all applications are incomplete and/or score below 65 points. Each applicant will be notified via email of the agency's funding decision.

B. In making its decision about your application, RUS may determine that your application is:

1. Eligible and selected for funding;
2. Eligible and offered fewer funds than requested;
3. Eligible but not selected for funding; or
4. Ineligible for the grant.

C. Given the exigency of the need to respond to recent hurricanes, tornados, floods, forest fires and other presidentially declared emergencies, appeals of the funding decisions under this notice shall be made exclusively to the Administrator of the Rural Utilities Service within 10 business days of receiving email notice of the funding decision. The Administrator's decision shall be final and non-reviewable by the National Appeals Division.

D. Applicants selected for funding will complete a grant agreement suitable to RUS, which outlines the terms and conditions of the grant award. Pursuant to the grant agreement, grant funds may be released over the course of the grant period in reimbursement for the performance of eligible, approved activities which do not duplicate similar federal efforts or tasks. The grant agreement may also include reporting and pre-approval requirements

consistent with 7 CFR part 1775 which if not met, may result in a delay in reimbursement, disallowance of expense or a suspension of the grant.

E. Grantees will be reimbursed as follows:

1. SF-270, "Request for Advance or Reimbursement," will be completed by the grantee and submitted to either the State or National Office not more frequently than monthly.

2. Upon receipt of a properly completed SF-270, payment will ordinarily be made within 30 days.

F. Any change in the scope of the project, budget adjustments of more than 10 percent of the total budget, or any other significant change in the project must be reported to and approved by the approval official by written amendment to the Grant Agreement. Any change not approved may be cause for termination of the grant.

G. Project reporting.

1. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved.

2. SF-269, "Financial Status Report (short form)," and a project performance activity report will be required of all grantees on a quarterly basis, due 30 days after the end of each quarter.

3. A final project performance report will be required with the last SF-269 due 90 days after the end of the last quarter in which the project is completed. The final report may serve as the last quarterly report.

4. All grantees are to submit an original of each report to the National Office. The project performance reports should detail, in a narrative format, activities that have transpired for the specific time period.

H. The grantee will provide an audit report or financial statements in accordance with Uniform Audit Requirements for Federal Awards at 2 CFR part 200, subpart F.

VII. Agency Contacts

A. *Web site:* <http://www.usda.gov/rus/water>. The RUS' Web site maintains up-to-date resources and contact information for Technical Assistance and Training Grants program.

B. *Phone:* 202-720-9586.

C. *Email:* anita.obrien@wdc.usda.gov.

D. *Main point of contact:* Anita O'Brien, Loan Specialist, Water and Environmental Programs, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture.

VIII. USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large

print, audiotope, American Sign Language, etc.) should contact the responsible agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Stop 9410, Washington, DC 20250-9410; (2) Fax: (202) 690-7442; or (3) Email: program.intake@usda.gov. USDA is an equal opportunity provider, employer, and lender.

Dated: September 25, 2017.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2017-20852 Filed 9-27-17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-39-2017]

Foreign-Trade Zone (FTZ) 214—Lenoir County, North Carolina; Authorization of Export-Only Production Activity; Nutkao USA, Inc.; (Hazelnut Cocoa Spread); Battleboro, North Carolina

On May 24, 2017, Nutkao USA, Inc. submitted a notification of proposed export-only production activity to the FTZ Board for its facility within FTZ 214 in Battleboro, North Carolina.

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 26663-26664, June 8, 2017). On September 21, 2017, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The export-only 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 22, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017-20815 Filed 9-27-17; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-35-2017]

Foreign-Trade Zone (FTZ) 144—Brunswick, Georgia; Authorization of Production Activity; Mercedes Benz USA, LLC; (Accessorizing Passenger Motor Vehicles); Brunswick, Georgia

On May 8, 2017, the Brunswick and Glynn County Development Authority, grantee of FTZ 144, submitted a notification of proposed production activity to the FTZ Board on behalf of Mercedes Benz USA, LLC, within Site 2 of FTZ 144.

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 25238-25239, June 1, 2017). On September 5, 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, and further subject to a restriction that carpets of man-made fibers would be admitted to the FTZ in privileged foreign status (19 CFR 146.41).

Dated: September 22, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017-20817 Filed 9-27-17; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-33-2017]

Foreign-Trade Zone (FTZ) 50—Long Beach, California; Authorization of Production Activity; Mercedes Benz USA, LLC; (Accessorizing Passenger Motor Vehicles); Long Beach, California

On May 8, 2017, the Port of Long Beach, California, grantee of FTZ 50, submitted a notification of proposed production activity to the FTZ Board on behalf of Mercedes Benz USA, LLC, within Site 41 of FTZ 50.

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 25239–25240, June 1, 2017). On September 5, 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, and further subject to a restriction that carpets of man-made fibers would be admitted to the FTZ in privileged foreign status (19 CFR 146.41).

Dated: September 22, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–20809 Filed 9–27–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–37–2017]

Foreign-Trade Zone (FTZ) 114—Peoria, Illinois; Authorization of Production Activity; Bell Sports, Inc., Subzone 114F (Sports Equipment), Rantoul, Illinois

On May 15, 2017, Bell Sports, Inc., submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 114F, in Rantoul, Illinois.

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 25597, June 2, 2017). On September 12, 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, and subject to a restriction requiring that polypropylene webbing for bike helmets be admitted to the subzone in privileged foreign status (19 CFR 146.41).

Dated: September 22, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–20805 Filed 9–27–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–36–2017]

Foreign-Trade Zone (FTZ) 64—Jacksonville, Florida; Authorization of Production Activity; Hans-Mill Corporation (Household Trash Cans and Plastic Storage Totes), Jacksonville, Florida

On May 10, 2017, Hans-Mill Corporation submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 64D, in Jacksonville, Florida.

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 25596, June 2, 2017). On September 7, 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 22, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–20818 Filed 9–27–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–83–2017]

Approval of Subzone Expansion; Mitsubishi Chemical Carbon Fiber and Composites, Inc.; Sacramento, California

On June 1, 2017, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Sacramento-Yolo Port District, grantee of FTZ 143, requesting an expansion of Subzone 143D, subject to the existing activation limit of FTZ 143, on behalf of Mitsubishi Chemical Carbon Fiber and Composites, Inc., in Sacramento, California.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (82 FR 28628, June 23, 2017). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to expand

Subzone 143D was approved on September 13, 2017, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 143's 2,000-acre activation limit.

Dated: September 22, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–20819 Filed 9–27–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–11–2017]

Approval of Subzone Status; LT Autos, LLC, Ponce, Puerto Rico

On January 31, 2017, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by CODEZOL, C.D., grantee of FTZ 163, requesting subzone status subject to the existing activation limit of FTZ 163, on behalf of LT Autos, LLC, in Ponce, Puerto Rico. The application was amended on June 28, 2017.

The amended application was processed in accordance with the FTZ Act and Regulations, including notices in the **Federal Register** inviting public comment (82 FR 9370–9371, February 6, 2017; 82 FR 32530–32531, July 14, 2017). The FTZ staff examiner reviewed the amended application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR 400.36(f)), the amended application to establish Subzone 163J was approved on September 7, 2017, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 163's 923.36-acre activation limit.

Dated: September 22, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–20808 Filed 9–27–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

[B-34-2017]

**Foreign-Trade Zone (FTZ) 74—
Baltimore, Maryland; Authorization of
Production Activity; Mercedes Benz
USA, LLC; (Accessorizing Passenger
Motor Vehicles); Baltimore, Maryland**

On May 8, 2017, the City of Baltimore, Maryland, grantee of FTZ 74, submitted a notification of proposed production activity to the FTZ Board on behalf of Mercedes Benz USA, LLC, within Site 6 of FTZ 74.

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 25240, June 1, 2017). On September 5, 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, and further subject to a restriction that carpets of man-made fibers would be admitted to the FTZ in privileged foreign status (19 CFR 146.41).

Dated: September 22, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017-20810 Filed 9-27-17; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

[B-59-2017]

**Foreign-Trade Zone (FTZ) 47—Boone
County, Kentucky; Notification of
Proposed Production Activity; Valeo
North America, Inc.; (Automotive
Clutch and Compressor Assemblies);
Winchester, Kentucky**

Valeo North America, Inc. (Valeo) submitted a notification of proposed production activity to the FTZ Board for its facility in Winchester, Kentucky within FTZ 47. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 19, 2017.

The applicant has also submitted a separate application for FTZ designation at the Valeo facility under FTZ 47. The facility is used for the final assembly of clutch and compressor components for the automotive industry. Pursuant to 15

CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Valeo from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Valeo would be able to choose the duty rates during customs entry procedures that apply to: Compressor assemblies for motor vehicles; and, electromagnetic clutch assemblies (duty rate ranges from free to 3.1%). Valeo would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Electromagnetic clutch assemblies; compressor bodies and housings; compressor coils; rotors; compressor armatures; compressor fittings; stainless steel bolts; stainless steel screws; and, electromagnetic shims and snap rings (duty rate ranges from free to 8.5%).

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 November 7, 2017.

A copy of the notification 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 Elizabeth Whiteman at Elizabeth.Whiteman@trade.gov or (202) 482-0473.

Dated: September 22, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017-20816 Filed 9-27-17; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

[S-151-2017]

**Foreign-Trade Zone 123—Denver,
Colorado; Application for Subzone;
Lockheed Martin Corporation, Space
Systems Company, Littleton, Colorado**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City and County of Denver, Colorado, grantee of FTZ 123, requesting subzone status for the facilities of Lockheed Martin Corporation, Space Systems Company (Lockheed Martin), located in Littleton, Colorado. 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 25, 2017.

The proposed subzone (86.35 acres) is located at 12257 South Wadsworth Boulevard, Littleton, Colorado. A notification of proposed production activity will be submitted and will be published separately for public comment. The proposed subzone would be subject to the existing activation limit of FTZ 123.

In accordance with the Board's regulations, Christopher Kemp 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 November 7, 2017. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 22, 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 Christopher Kemp at Christopher.Kemp@trade.gov or (202) 482-0862.

Dated: September 25, 2017.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2017-20803 Filed 9-27-17; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-110-2017]

Approval of Subzone Expansion; Lam Research Corporation, Fremont and Livermore, California

On July 20, 2017, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City of San Jose, grantee of FTZ 18, requesting an expansion of Subzone 18F, subject to the existing activation limit of FTZ 18, on behalf of Lam Research Corporation, in Fremont and Livermore, California.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (82 FR 34475-3476, July 25, 2017). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to expand Subzone 18F was approved on September 14, 2017, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 143's 2,000-acre activation limit.

Dated: September 22, 2017.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2017-20807 Filed 9-27-17; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-88-2017]

Approval of Subzone Status; BGM America, Inc. Marion, South Carolina

On June 13, 2017, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Richland-Lexington Airport District, grantee of FTZ 127, requesting subzone status subject to the existing activation limit of FTZ 127, on behalf of BGM America, Inc., in Marion, South Carolina.

The application was processed in accordance with the FTZ Act and

Regulations, including notice in the **Federal Register** inviting public comment (82 FR 30821, July 3, 2017). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 127C was approved on September 8, 2017, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 127's 2,000-acre activation limit.

Dated: September 22, 2017.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2017-20806 Filed 9-27-17; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-150-2017]

Foreign-Trade Zone 47—Boone County, Kentucky; Application for Subzone, Valeo North America, Inc., Winchester, Kentucky

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Cincinnati FTZ, Inc., grantee of FTZ 47, requesting subzone status for the facility of Valeo North America, Inc. (Valeo), located in Winchester, Kentucky. 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 25, 2017.

The proposed subzone (12 acres) is located at 1175 Enterprise Drive, Winchester. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B-59-2017). The proposed subzone would be subject to the existing activation limit of FTZ 47.

In accordance with the Board's regulations, Elizabeth Whiteman 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 November 7, 2017. Rebuttal comments in response to material submitted during the foregoing period may be

submitted during the subsequent 15-day period to November 22, 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 Elizabeth Whiteman at Elizabeth.Whiteman@trade.gov or (202) 482-0473.

Dated: September 25, 2017.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2017-20802 Filed 9-27-17; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-032-2017]

Foreign-Trade Zone (FTZ) 86—Tacoma, Washington; Authorization of Export-Only Production Activity, McFarland Cascade Holdings, Inc./Stella-Jones Corporation (Treaded Canadian Softwood Lumber, Plywood, Agriculture Posts, and Landscape Tinders); Tacoma, Washington

On May 15, 2017, McFarland Cascade Holdings, Inc./Stella-Jones Corporation (McFarland Cascade) submitted a notification of proposed export-only production activity to the FTZ Board for its facility within FTZ Subzone 86H in Tacoma, Washington.

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 26663, June 8, 2017). On September 12, 2017, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The export-only 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 22, 2017.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2017-20814 Filed 9-27-17; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration****Upcoming Secretary-Led International Trade Administration Multi-Sector Trade Mission to China**

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

The United States Department of Commerce, International Trade Administration (ITA) is announcing an additional upcoming trade mission that will be recruited, organized, and implemented by ITA. The mission is:

- Secretary-Led Multi-Sector Trade Mission to China—mid-November 2017

A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission Web site: <http://export.gov/trademissions>.

For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (<http://export.gov/trademissions>) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

The Following Conditions for Participation Will Be Used for This Mission

An applicant must sign and submit a completed application and supplemental application materials, including adequate information on the represented company's products and/or services, primary market objectives, and goals for participation. If an incomplete application form is submitted or the information and material submitted does not demonstrate how the applicant satisfies the participation criteria, the Department of Commerce may reject the application, request additional information, or take the lack of information into account when evaluating the application.

Each applicant must:

- Identify whether the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content. In cases where

the U.S. content does not exceed 50 percent, especially where the applicant intends to pursue investment in major project opportunities, the following factors may be considered in determining whether the applicant's participation in the Mission is in the U.S. national interest:

- U.S. materials and equipment content;
 - U.S. labor content;
 - Contribution to the U.S. technology base, including conduct of research and development in the United States;
 - Repatriation of profits to the U.S. economy;
 - Potential for follow-on business that would benefit the U.S. economy;
 - Certify that the export of their products and services is in compliance with U.S. export controls and regulations;
 - Certify that it has identified to the Department of Commerce any business matter pending before any bureau or office in the Departments of Commerce;
 - Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Departments of Commerce; and
 - Certify that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.
- In the case of a trade association, the applicant must certify that each firm or service provider to be represented by the association can make the above certifications.

The Following Selection Criteria Will Be Used for This Mission

Selection will be based on the following criteria, listed in decreasing order of importance:

- Suitability of the company's (or in the case of a trade association, represented company's) products or services to the Chinese market and the likelihood of increased exports or business interests in China as a result of this mission;
- Consistency of the company's (or in the case of a trade association, represented company's) goals and objectives with the stated scope of the mission;
- Rank/seniority of the applicant's designated representative;
- Current or pending major project/transaction/agreement/investment with Chinese entities or organizations with a capacity to increase U.S. exports to China; and
- Demonstrated export experience (in the case of a trade association, of the

companies being represented) to China and/or other foreign markets.

The balance of entities participating in the mission with respect to type, size, location, sector or subsector may also be considered during the review process.

Referrals from political organizations and any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions.

Trade Mission Participation Fees

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such visas will be the responsibility of the mission participant. Government fees and processing expenses to obtain such visas are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade Mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at <https://travel.state.gov/content/passports/en/alertswarnings.html>. Any question regarding insurance coverage

must be resolved by the participant and its insurer of choice.

Definition of Small and Medium Sized Enterprise

For purposes of assessing participation fees, the Department of Commerce defines Small and Medium Sized Enterprises (SME) as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see <http://www.sba.gov/services/contractingopportunities/sizestandardstoc/index.html>). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service’s user fee schedule that became effective May 1, 2008 (see <http://www.export.gov/newsletter/march2008/initiatives.html> for additional information).

Mission List: (additional information about each mission can be found at <http://export.gov/trademissions>).

Secretary-Led Multi-Sector Trade Mission to China, Mid-November 2017

Summary

United States Secretary of Commerce Wilbur Ross will lead a Trade Mission to China in mid-November 2017. This multi-sector mission will promote U.S. exports to China by supporting U.S. companies in launching or increasing their business in the marketplace, as well as address trade policy issues with high-level Chinese officials. Key elements will include business-to-government and business-to-industry meetings, market briefings, networking events and opportunities to promote new deals and agreements between mission participants and Chinese entities through signing ceremonies.

In April 2017, President Trump and President Xi met at Mar-a-Lago to discuss strategic and economic concerns of both countries. The Presidents agreed to meet again in 2017 to further the relationship. Addressing the imbalance in U.S.-China trade has been a central focus of discussions between President Trump and President Xi, and this trade mission will advance the bilateral commercial relationship by promoting business deals between U.S. and Chinese firms, as well as addressing market access barriers faced by U.S. companies. President Xi and other senior Chinese officials have signaled their interest in improving the U.S.-China relationship through increased exports of U.S. goods and services to China.

The trade mission delegation will be composed of senior executives (equivalent to C-suite) from 12–25 U.S. firms.

SCHEDULE

Day One, November	Beijing	<ul style="list-style-type: none"> ■ Business Delegation arrives in Beijing. ■ Business Delegation Meet and Greet. ■ Participant dinner/networking.
Day Two, November	Beijing	<ul style="list-style-type: none"> ■ Opening Session: Welcome Remarks from Senior Government Officials. ■ Briefings/Panels with Chinese Ministers and industry experts. ■ Working lunch. ■ Briefings/Panels with Chinese Ministers and industry experts. ■ Signings Ceremony. ■ Networking Reception and Gala Dinner.

Participation Requirements

All companies interested in participating in the Secretarial Trade Mission to China must complete and submit an application package for consideration to the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 12 and a maximum of 25 companies will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The fee schedule for the mission is below:

- \$10,000 for large firms or trade associations
- \$9,500 for a small or medium-sized enterprises (SMEs) ¹

¹ For these purposes, a SME includes any company that qualifies as a small business under SBA regulations (see https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf) or has 500 or fewer employees. Parent companies,

- \$1,500 additional representative (large firm, SME, or trade association—limit one additional representative per company)

Participants selected for the trade mission will be expected to pay for the cost of all personal expenses, including, but not limited to, air travel, lodging, meals, communication, and incidentals unless otherwise noted. In the event the mission is cancelled, no personal expenses paid in anticipation of a trade mission will be reimbursed. However, participation fees for a cancelled trade mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

Business visas will be required. Government fees and processing expenses to obtain such visas are not included in the participation fee. However, the U.S. Department of Commerce will provide instructions to each participant on the procedures required to obtain necessary business visas.

affiliates, and subsidiaries will be considered when determining business size.

Timeline for Recruitment

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register** (<http://www.gpoaccess.gov/fr>), posting on ITA’s business development mission calendar (<http://export.gov/trademissions>) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment will begin immediately and conclude no later than October 6, 2017. Applications can be completed online and are available at www.export.gov/ChinaMission2017. At the time the dates of the mission are announced, they will be posted on this Web site. There is no guarantee this will occur before the application deadline.

The application deadline is October 6, 2017. Completed applications should be submitted online. Applications received after the October 6th deadline will be considered only if space and scheduling constraints permit. The Department of

Commerce will evaluate all applications and inform applicants of selection decisions as soon as possible after the application deadline.

CONTACTS

General Business and Applications: The Office of Business Liaison, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 5062, Washington, DC 20230, Phone: +1-202-482-1360, Fax: 202-482-4054, E-mail: BusinessLiaison@doc.gov .	Tyler Shields, Director, The Office of China and Mongolia, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 38013, Washington, DC 20230, Phone: +1-202-482-3544, Email: tyler.shields@trade.gov .
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Frank Spector,

Senior Advisor for Trade Missions.

[FR Doc. 2017-20758 Filed 9-27-17; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-818]

Certain Steel Nails From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2014-2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 6, 2017, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain steel nails from the Socialist Republic of Vietnam. The review covers Truong Vinh Ltd. (Truong Vinh), Rich State, Inc. (Rich State), and Dicha Sombrilla Co., Ltd. (Dicha Sombrilla). The period of review (POR) is December 29, 2014, through June 30, 2016. We invited interested parties to comment on our preliminary results. No parties commented, and our final results remain unchanged from our preliminary results. The final results are listed in the section entitled "Final Results of Review," below.

DATES: Effective September 28, 2017.

FOR FURTHER INFORMATION CONTACT:

Mark Flessner or Chelsey Simonovich, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-6312 or (202) 482-1979, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2017, the Department published the preliminary results of this review in the *Federal Register*.¹ We

invited parties to comment on the *Preliminary Results*. No parties submitted case or rebuttal briefs.

Scope of the Order

The merchandise covered by this order is certain steel nails having a nominal shaft length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope of this order are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft

length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (e.g., furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this order are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision).

Also excluded from the scope of this order are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of this order are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth

¹ See *Certain Steel Nails from the Socialist Republic of Vietnam: Preliminary Results and Partial Recission of the Antidumping Duty*

Administrative Review; 2014-2016, 82 FR 26050 (June 6, 2017) (*Preliminary Results*).

symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of this order are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this order are thumb tacks, which are currently classified under HTSUS subheading 7317.00.10.00.

Certain steel nails subject to this order are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to these orders also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Final Results of Review

The Department received no comments concerning the *Preliminary Results*. Accordingly, the Department continues to determine that the following weighted-average dumping margins exist for these final results:

Company	Weighted-average dumping margin (percent)
Dicha Sombrilla Co., Ltd	323.99
Rich State, Inc	323.99
Truong Vinh Ltd	323.99

Disclosure

Normally, the Department discloses to interested parties the calculations performed for the final results within five days of the publication of this notice, in accordance with 19 CFR 351.224(b). However, because we made no changes to these margins since the *Preliminary Results*, no disclosure of calculations is necessary for these final results.

Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), the Department has determined, and 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 assessment instructions to CBP 15 days after the date of publication of the final results of this administrative review in the **Federal Register**.

Consistent with the Department's assessment practice in non-market economy (NME) cases, for entries that were not reported in U.S. sales databases submitted by companies individually examined during the administrative review, the Department will instruct CBP to liquidate such entries at the Vietnam-wide rate. Additionally, if the Department determines that an exporter under review had no shipments of subject merchandise, any suspended entries that entered under the exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the Vietnam-wide rate.²

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Truong Vinh, Rich State, and Dicha Sombrilla, the cash deposit rate will be equal to the weighted-average dumping margin listed above; (2) for previously investigated or reviewed Vietnamese and non-Vietnamese 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 exporter-specific rate published for the most-recently completed segment of this proceeding in which the exporter was reviewed; (3) for all Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be that established for the Vietnam-wide entity, which is 323.99 percent;³ and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporter that supplied that non-Vietnamese exporter with the subject merchandise. These deposit requirements, when imposed, shall remain in effect until further notice.

² See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

³ *Certain Steel Nails from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 80 FR 29622 (May 22, 2015).

Notification to Importers

This notice serves as a final 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 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 their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: September 22, 2017.

Carole Showers,

Executive Director, Office of Policy, Performing the Duties of the Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017-20800 Filed 9-27-17; 8:45 am]

BILLING CODE 3510-DS-P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2010-0056]

Agency Information Collection Activities; Submission for OMB Review; Comment Request—Safety Standard for Bicycle Helmets

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission) announces that the CPSC has submitted to the Office of Management and Budget (OMB) a request for extension of approval of a collection of information associated with the CPSC's Safety Standard for

Bicycle Helmets (OMB No. 3041–0127). In the **Federal Register** of July 21, 2017 (82 FR 33875), the CPSC published a notice announcing the agency's intent to seek an extension of approval of this collection of information. CPSC received no comments in response to that notice. Therefore, by publication of this notice, the Commission announces that CPSC has submitted to the OMB a request for extension of approval of that collection of information without change.

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by October 30, 2017.

ADDRESSES: Submit comments about this request by email: OIRA_submission@omb.eop.gov or fax: 202–395–6881. Comments by mail should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the CPSC, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. In addition, written comments that are sent to OMB also should be submitted electronically at <http://www.regulations.gov>, under Docket No. CPSC–2010–0056.

FOR FURTHER INFORMATION CONTACT: Charu S. Krishnan, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7221, or by email to: ckrishnan@cpsc.gov.

SUPPLEMENTARY INFORMATION: CPSC has submitted the following currently approved collection of information to OMB for extension:

Title: Safety Standard for Bicycle Helmets.

OMB Number: 3041–0127.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of bicycle helmets.

Estimated Number of Respondents: 38 manufacturers and importers will maintain test records of an estimated 200 models total annually, including older models and new models. Testing on bicycle helmets must be conducted for each new production lot and the test records must be maintained for 3 years.

Estimated Time per Response: 200 hours/model to test 40 new models (including new prototypes) and an estimated 100 hours/model to test new production lots of 160 older models. Additionally, manufacturers and importers may require 4 hours annually per model for recordkeeping for approximately 200 models.

Total Estimated Annual Burden: 24,800 hours (24,000 hours for testing and 800 hours for recordkeeping).

General Description of Collection: In 1998, the Commission issued a safety standard for bicycle helmets (16 CFR part 1203). The standard includes requirements for labeling and instructions. The standard also requires that manufacturers and importers of bicycle helmets subject to the standard issue certificates of compliance based on a reasonable testing program. Every person issuing certificates of compliance must maintain certain records. Respondents must comply with the requirements in 16 CFR part 1203 for labeling and instructions, testing, certification, and recordkeeping.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2017–20779 Filed 9–27–17; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2015–0022]

Guidance Document on Hazardous Additive, Non-Polymeric Organohalogen Flame Retardants in Certain Consumer Products

AGENCY: Consumer Product Safety Commission.

ACTION: Guidance document.

SUMMARY: The Commission announces that it has approved a statement that provides guidance for manufacturers, importers, distributors, retailers, and consumers of certain consumer products that may contain harmful organohalogen flame retardants in an additive form. To protect consumers and children from the potential toxic effects of exposure to these chemicals, the Commission recommends that manufacturers of children's products, upholstered furniture sold for use in residences, mattresses (and mattress pads), and plastic casings surrounding electronics refrain from intentionally adding non-polymeric, organohalogen flame retardants ("OFRs") to their products. Further, the Commission recommends that, before purchasing such products for resale, importers, distributors, and retailers obtain assurances from manufacturers that such products do not contain OFRs. Finally, the Commission recommends that consumers, especially those who are pregnant or with young children, inquire and obtain assurances from retailers that such products do not contain OFRs.

FOR FURTHER INFORMATION CONTACT:

DeWane Ray, Deputy Director, Safety Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7547, or email: JRay@cpsc.gov.

SUPPLEMENTARY INFORMATION: The text of the guidance document is as follows:

Guidance for Hazardous Additive, Non-Polymeric Organohalogen Flame Retardants in Certain Consumer Products

Summary: The U.S. Consumer Product Safety Commission¹ issues this guidance to manufacturers, importers, distributors, retailers, and consumers to protect consumers (particularly children) from exposure to additive, non-polymeric organohalogen flame retardants ("OFRs")² found in the following products: (1) Durable infant or toddler products, children's toys, child care articles or other children's products (other than children's car seats); (2) upholstered furniture sold for use in residences; (3) mattresses and mattress pads; and (4) plastic casings surrounding electronics.³ OFRs, also referred to as halogenated flame retardants, typically are added to foams, textiles, and polymers before, during or after production in theory to improve their resistance to fire. OFRs are not chemically bound to the substrate and may be released from the product, thereby leading to potential human and environmental exposures. On June 30, 2015, a coalition of consumer advocates and health professionals petitioned the Commission to declare four categories of consumer products containing OFRs to be "banned hazardous substances" under the Federal Hazardous Substances Act ("FHSA"). The petitioners claim that due to their inherent physical-chemical properties, OFRs, among other things, are toxic, migrate widely out of products regardless of how the products are used, bioaccumulate, and present a serious public health concern. On September 20, 2017, the Commission voted to grant the petition to initiate rulemaking under

¹ The Commission voted 3–2 to publish this Guidance Document in the **Federal Register**. Commissioner Robert S. Adler, Commissioner Marietta S. Robinson, and Commissioner Elliot F. Kaye voted to approve publication of the Guidance Document. Acting Chairman Ann Marie Buerkle and Commissioner Joseph P. Mohorovic voted against publication of the Guidance Document.

² For purposes of this guidance, OFRs refers to additive, non-polymeric chemicals only; it does not include reactive or polymeric OFRs.

³ This guidance is not a binding or enforceable rule and would not change any person's rights, duties, or obligations under the Federal Hazardous Substances Act or any other Act administered by the Commission.

the FHSA and directed the staff to convene a Chronic Hazard Advisory Panel pursuant to the procedures of section 28 of the Consumer Product Safety Act (15 U.S.C. 2077) to further study the effects of these OFRs as a class of chemicals on consumers' health. In the meantime, based on the overwhelming scientific evidence presented to the Commission to date, the Commission has serious concerns regarding the potential toxicity of OFRs, and the risks of exposure, particularly to vulnerable populations, to OFRs, from the four categories of products listed in the petition. Accordingly, the Commission requests that manufacturers of children's products, furniture, mattresses, and electronics casings eliminate the use of such chemicals in these products. The Commission also recommends that, before purchasing such products for resale, importers, distributors, and retailers obtain assurances from manufacturers that such products do not contain OFRs. Finally, the Commission recommends that consumers, especially those who are pregnant or with young children, inquire and obtain assurances from retailers that such products do not contain OFRs.

Hazard: Scientific evidence to date demonstrates that OFRs, when used in non-polymeric, additive form, migrate from consumer products, leading to widespread human exposure to mixtures of these chemicals. Exposures to OFRs occur because of the semi-volatile property of these chemicals that results in migration of the chemicals and the chemicals' absorption into household dust and other surfaces where they persist in the indoor environment. At this time, there is no known way to direct consumers to use affected products in a manner that would guarantee reducing exposures to the American population to an acceptable level. Numerous peer-reviewed, published studies show that the vast majority of consumers have measurable quantities of OFRs in their blood. The known adverse health effects of these chemicals to consumers include: Reproductive impairment (e.g., abnormal gonadal development, reduced number of ovarian follicles, reduced sperm count, increased time to pregnancy); neurological impacts (e.g., decreased IQ in children, impaired memory, learning deficits, altered motor behavior, hyperactivity); endocrine disruption and interference with thyroid hormone action (potentially contributing to diabetes and obesity); genotoxicity; cancer; and immune disorders. These chemicals have a

disproportionately negative health effect on vulnerable populations, including children.

Guidance: Under the FHSA, 15 U.S.C. 1261(g) and (f)(1)(A), any substance or mixture of substances which is toxic, *i.e.*, that has the capacity to produce illness through ingestion, inhalation, or absorption through any bodily surface, and may cause substantial injury or illness during or as a proximate result of customary or reasonably foreseeable handling or use is a "hazardous substance." A product intended or packaged for household use containing a hazardous substance is required to have precautionary labeling under the FHSA (15 U.S.C. 1261(p)), but if labeling is not adequate to protect against the potential hazard, the Commission may declare the product banned. (15 U.S.C. 1261(q)(1)(B)). If an article intended for use by children is a hazardous substance or bears or contains a hazardous substance that is susceptible of access by a child to whom the article is entrusted, the article is a banned hazardous substance. *Id.* 1261(q)(1)(A).

To date, the Commission has not banned household products containing OFRs or required precautionary labeling for such products. However, on September 20, 2017, based on the overwhelming scientific evidence presented to date, the Commission voted to grant the petition to initiate rulemaking under the FHSA and directed the staff to convene a Chronic Hazard Advisory Panel pursuant to the procedures of section 28 of the Consumer Product Safety Act (15 U.S.C. 2077) to further study the effects of OFRs as a class of chemicals on consumers' health. Much of the evidence currently before the Commission suggests OFRs, as a class of chemicals, present a serious public health issue. Therefore, the Commission has serious concerns regarding the potential toxicity of OFRs, and the risks of exposure, particularly to vulnerable populations, to OFRs, from the four categories of products listed in the petition.

For these reasons, the Commission considers the use of OFRs in children's products, upholstered furniture sold for use in residences, mattresses and mattress pads, and plastic casings surrounding electronics to be ill-advised and encourages manufacturers to eliminate using them in such products. Further, the Commission recommends that, before, purchasing such products for resale, importers, distributors, and retailers obtain assurances from manufacturers that such products do not contain OFRs. Finally, the Commission

recommends that consumers, especially those who are pregnant or with young children, inquire and obtain assurances from retailers that such products do not contain OFRs.

Alberta E. Mills,

Acting Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2017-20733 Filed 9-27-17; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the KC-46 Third Main Operating Base (MOB 3) Beddown

AGENCY: Department of the Air Force.

ACTION: Notice of Availability (NOA) of a Record of Decision (ROD).

On September 8, 2017, the United States Air Force signed the ROD for the KC-46 Third Main Operating Base (MOB 3) Beddown. The ROD states the Air Force decision to beddown up to twelve (12) KC-46 Primary Aerospace Vehicles Authorized (PAA) in one squadron at Seymour Johnston Air Force Base, where the Air Force Reserve Command (AFRC) leads the Mobility Air Force Mission.

The decision was based on matters discussed in the Final Environmental Impact Statement (FEIS) for the KC-46 Third Main Operating Base (MOB 3) Beddown (<http://www.kc-46a-beddown.com/>); contributions from the public and regulatory agencies; and other relevant factors. The FEIS was made available to the public on April 14, 2017 through a NOA in the **Federal Register** (82 FR 17991) with a 30-day wait period that ended on May 15, 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. Hamid Kamalpour, AFCEC/CZN, 2261 Hughes Ave., Ste. 155, Lackland AFB, TX 78236-9853. Ph: (210) 925-2738.

Henry Williams, Jr.,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2017-20822 Filed 9-27-17; 8:45 am]

BILLING CODE 5001-10-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 17-01]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young, (703) 697-9107, *pamela.a.young14.civ@mail.mil* or Kathy Valadez, (703) 697-9217, *kathy.a.valadez.civ@mail.mil*; DSCA/DSA-RAN.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is

published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 17-01 with attached Policy Justification.

Dated: September 22, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY

201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 08 2017

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 17-01, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Bahrain for defense articles and services estimated to cost \$60.25 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Hooper".

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Regional Balance (Classified document provided under separate cover)



Transmittal No. 17-01

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Bahrain

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 5.10 million
Other	\$55.15 million
Total	\$60.25 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Two (2) MK 38 Mod 3 25mm Gun Weapons Systems

Non-MDE:

Two (2) 35 meter Fast Patrol Boats; two (2) SeaFLIR 380 HD Forward Looking Infra-Red (FLIR) devices; communication equipment; support equipment; spare and repair parts; tools and test equipment; technical data and publications; personnel training; U.S. government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Navy

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* September 8, 2017

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Bahrain—35 Meter Fast Patrol Boats

Bahrain has requested the purchase of two (2) 35 meter Fast Patrol Boats, each

equipped with one (1) MK38 Mod 3 25mm gun weapon system and one (1) SeaFLIR 380 HD Forward Looking Infra-Red (FLIR) device. Additionally, Bahrain has requested communication equipment; support equipment; spare and repair parts; tools and test equipment; technical data and publications; personnel training; U.S. government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The total estimated cost is \$60.25 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a major Non-NATO ally, which has been and continues to be an important security partner in the region. This proposed sale of patrol boats will enhance the military capabilities of the Royal Bahrain Naval Force in the fulfillment of its self-defense, maritime security, and counter-terrorism missions.

Bahrain will use the capability as a deterrent to regional threats and to strengthen its homeland defense. This sale will also improve interoperability with United States and regional allies. Bahrain will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors for systems listed include: 35 meter Fast Patrol Boats-SwiftShips, Morgan City, LA; MK38 Mod 3 25mm Gun Weapon System-BAE Systems, Louisville, KY; SeaFlir Model 380 HD Forward Looking Infra-Red Device-Flir Systems, Inc., Portland, OR. There are no known offset agreements proposed in conjunction with this potential sale.

Implementation of this proposed sale will require multiple trips by U.S.

Government and contractor representatives to participate in program and technical reviews plus boat reactivation and boat systems training in country, on a temporary basis, for a period of two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2017-20732 Filed 9-27-17; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 17-49]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young, (703) 697-9107, pamela.a.young14.civ@mail.mil or Kathy Valadez, (703) 697-9217, kathy.a.valadez.civ@mail.mil; DSCA/DSA-RAN.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 17-49 with attached Policy Justification and Sensitivity of Technology.

Dated: September 22, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY

201 12TH STREET SOUTH, STE 203

ARLINGTON, VA 22202-5408

SEP 11 2017

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 17-49, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Canada for defense articles and services estimated to cost \$5.23 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Hooper".

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology



Transmittal No. 17-49

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Canada

(ii) *Total Estimated Value:*

Major Defense Equipment*	\$2.64 billion
Other	\$2.59 billion
Total	\$5.23 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Ten (10) F/A-18E Super Hornet Aircraft, with F414-GE-400 Engines
 Eight (8) F/A-18F Super Hornet Aircraft, with F414-GE-400 Engines
 Eight (8) F414-GE-400 Engine Spares
 Twenty (20) AN/APG-79 Active Electronically Scanned Array (AESA) Radars
 Twenty (20) M61A2 20MM Gun Systems
 Twenty-eight (28) AN/ALR-67(V)3 Electronic Warfare Countermeasures Receiving Sets
 Fifteen (15) AN/AAQ-33 Sniper Advanced Targeting Pods
 Twenty (20) Multifunctional Information Distribution Systems—Joint Tactical Radio System (MIDS-JTRS)
 Thirty (30) Joint Helmet Mounted Cueing Systems (JHMCS)
 Twenty-eight (28) AN/ALQ-214 Integrated Countermeasures Systems
 One hundred thirty (130) LAU-127E/A and/or F/A Guided Missile Launchers
 Twenty-two (22) AN/AYK-29 Distributed Targeting System (DTS)
 Twenty-two (22) AN/AYK-29 Distributed Targeting Processor (DTP)
 One hundred (100) AIM-9X-2 Sidewinder Block II Tactical Missiles
 Thirty (30) AIM-9X-2 Sidewinder Block II Captive Air Training Missiles (CATM)
 Eight (8) AIM-9X-2 Sidewinder Block II Special Air Training Missiles (NATM)
 Twenty (20) AIM-9X-2 Sidewinder Block II Tactical Guidance Units
 Sixteen (16) AIM-9X-2 Sidewinder Block II CATM Guidance Units

Non-MDE:

Included in the sale are AN/AVS-9 Night Vision Goggles (NVG); AN/ALE-47 Electronic Warfare Countermeasures Systems; AN/ARC-210 Communication System;

AN/APX-111 Combined Interrogator Transponder; AN/ALE-55 Towed Decoys; Joint Mission Planning System (JMPS); AN/PYQ-10C Simple Key Loader (SKL); Data Transfer Unit (DTU); Accurate Navigation (ANAV) Global Positioning System (GPS) Navigation; KIV-78 Duel Channel Encryptor, Identification Friend or Foe (IFF); CADS/PADS; Instrument Landing System (ILS); Aircraft Armament Equipment (AAE); High Speed Video Network (HSVN) Digital Video Recorder (HDVR); Launchers (LAU-115D/A, LAU-116B/A, LAU-118A); flight test services; site survey; aircraft ferry; auxiliary fuel tanks; aircraft spares; containers; storage and preservation; transportation; aircrew and maintenance training; training aids and equipment, devices and spares and repair parts; weapon system support and test equipment; technical data Engineering Change Proposals; technical publications and documentation; software; avionics software support; software development/integration; system integration and testing; U.S. Government and contractor engineering technical and logistics support; Repair of Repairable (RoR); repair and return warranties; other technical assistance and support equipment; and other related elements of logistics and program support.

(iv) *Military Department:* Navy
 (v) *Prior Related Cases, if any:* CN-P-FEC (planning case)
 (vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None
 (vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex
 (viii) *Date Report Delivered to Congress:* September 11, 2017
 * As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Government of Canada—F/A-18E/F Super Hornet Aircraft with Support

The Government of Canada has requested a possible sale of ten (10) F/A-18E Super Hornet aircraft, with F414-GE-400 engines; eight (8) F/A-18F Super Hornet aircraft, with F414-GE-400 engines; eight (8) F414-GE-400 engine spares; twenty (20) AN/APG-79 Active Electronically Scanned Array (AESA) radars; twenty (20) M61A2 20MM gun systems; twenty-eight (28) AN/ALR-67(V)3 Electronic Warfare

Countermeasures Receiving Sets; fifteen (15) AN/AAQ-33 Sniper Advanced Targeting Pods; twenty (20) Multifunctional Information Distribution Systems—Joint Tactical Radio System (MIDS-JTRS); thirty (30) Joint Helmet Mounted Cueing Systems (JHMCS); twenty-eight (28) AN/ALQ-214 Integrated Countermeasures Systems; one hundred thirty (130) LAU-127E/A and or F/A Guided Missile Launchers; twenty-two (22) AN/AYK-29 Distributed Targeting System (DTS); twenty-two (22) AN/AYK-29 Distributed Targeting Processor (DTP); one hundred (100) AIM-9X-2 Sidewinder Block II Tactical Missiles; thirty (30) AIM-9X-2 Sidewinder Block II Captive Air Training Missiles (CATM); eight (8) AIM-9X-2 Sidewinder Block II Special Air Training Missiles (NATM); twenty (20) AIM-9X-2 Sidewinder Block II Tactical Guidance Units; sixteen (16) AIM-9X-2 Sidewinder Block II CATM Guidance Units. Also included in this sale are AN/AVS-9 Night Vision Goggles (NVG); AN/ALE-47 Electronic Warfare Countermeasures Systems; AN/ARC-210 Communication System; AN/APX-111 Combined Interrogator Transponder; AN/ALE-55 Towed Decoys; Joint Mission Planning System (JMPS); AN/PYQ-10C Simple Key Loader (SKL); Data Transfer Unit (DTU); Accurate Navigation (ANAV) Global Positioning System (GPS) Navigation; KIV-78 Duel Channel Encryptor, Identification Friend or Foe (IFF); CADS/PADS; Instrument Landing System (ILS); Aircraft Armament Equipment (AAE); High Speed Video Network (HSVN) Digital Video Recorder (HDVR); Launchers (LAU-115D/A, LAU-116B/A, LAU-118A); flight test services; site survey; aircraft ferry; auxiliary fuel tanks; aircraft spares; containers; storage and preservation; transportation; aircrew and maintenance training; training aids and equipment, devices and spares and repair parts; weapon system support and test equipment; technical data Engineering Change Proposals; technical publications and documentation; software; avionics software support; software development/integration; system integration and testing; U.S. Government and contractor engineering technical and logistics support; Repair of Repairable (RoR); repair and return warranties; other technical assistance and support equipment; and other related elements of logistics and program support. The estimated total case value is \$5.23 billion.

This proposed sale will contribute to the foreign policy and national security

objectives of the United States by helping to improve the security of a NATO ally which has been, and continues to be, a key democratic partner of the United States in ensuring peace and stability. The acquisition of the F/A-18E/F Super Hornet aircraft, associated weapons and capability will allow for greater interoperability with U.S. forces, providing benefits for training and possible future coalition operations in support of shared regional security objectives.

The proposed sale of the F/A-18E/F Super Hornet aircraft will improve Canada's capability to meet current and future warfare threats and provide greater security for its critical infrastructure. The F/A-18E/F Super Hornet aircraft will supplement and eventually replace a portion of the Canadian Air Force's aging fighter aircraft. Canada will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be: Boeing Company, St. Louis, MO; Northrop Grumman, Los Angeles, CA; Raytheon, El Segundo, CA; General Electric, Lynn, MA; and Raytheon Missile Systems Company, Tucson, AZ. The Government of Canada has advised that it will negotiate offset agreements with key U.S. contractors.

Implementation of this proposed sale will require the assignment of contractor representatives to Canada on and intermittent basis over the life of the case to support delivery of the F/A-18E/F Super Hornet aircraft and weapons and to provide supply support management, inventory control and equipment familiarization.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 17-49

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. The F/A-18E/F Super Hornet is a single-seat and two-seat, twin engine, multi-mission fighter/attack aircraft that can operate from either aircraft carriers or land bases. The F/A-18E/F Super Hornet fills a variety of roles: Air superiority, fighter escort, suppression of enemy air defenses, reconnaissance, forward air control, close and deep air support, and day and night strike missions. The F/A-18E/F Weapons System is considered SECRET.

2. The AN/APG-79 Active Electronically Scanned Array (AESA) Radar System is classified SECRET. The radar provides the F/A-18E/F Super Hornet aircraft with all-weather, multi-mission capability for performing air-to-air and air-to-ground targeting and attack. Air-to-air modes provide the capability for all-aspect target detection, long-range search and track, automatic target acquisition, and tracking of multiple targets. Air-to-surface attack modes provide high-resolution ground mapping navigation, weapon delivery, and sensor cueing. The system component hardware (Antenna, Transmitter, Radar Data Processor, and Power Supply) is UNCLASSIFIED. The Receiver-Exciter hardware is CONFIDENTIAL. The radar Operational Flight Program (OFP) is classified SECRET. Documentation provided with the AN/APG-79 radar set is classified SECRET.

3. The AN/ALR-67(V)3 Electronic Warfare Countermeasures Receiving Set is classified CONFIDENTIAL. The AN/ALR-67(V)3 provides the F/A-18E/F aircrew with radar threat warnings by detecting and evaluating friendly and hostile radar frequency threat emitters and providing identification and status information about the emitters to on-board Electronic Warfare (EW) equipment and the aircrew. The Operational Flight Program (OFP) and User Data Files (UDF) used in the AN/ALR-67(V)3 are classified SECRET. Those software programs contain threat parametric data used to identify and establish priority of detected radar emitters.

4. The Multifunctional Informational Distribution System-Joint Tactical Radio System (MIDS-JTRS) is classified CONFIDENTIAL. The MIDS-JTRS is a secure data and voice communication network using Link-16 architecture. The system provides enhanced situational awareness, positive identification of participants within the network, secure fighter-to-fighter connectivity, secure voice capability, and ARN-118 TACAN functionality. It provides three major functions: Air Control, Wide Area Surveillance, and Fighter-to-Fighter. The MIDS-JTRS can be used to transfer data in Air-to-Air, Air-to-Surface, and Air-to-Ground scenarios. The MIDS Enhanced Interference Blanking Unit (EIBU) provides validation and verification of equipment and concept. EIBU enhances input/output signal capacity of the MIDS-JTRS and addresses parts obsolescence.

5. The Joint Helmet Mounted Cueing System (JHMCS) is a modified HGU-55/P helmet that incorporates a visor-projected Heads-Up Display (HUD) to

cue weapons and aircraft sensors to air and ground targets. In close combat, a pilot must currently align the aircraft to shoot at a target. JHMCS allows the pilot to simply look at a target to shoot. This system projects visual targeting and aircraft performance information on the back of the helmet's visor, enabling the pilot to monitor this information without interrupting his field of view through the cockpit canopy. The system uses a magnetic transmitter unit fixed to the pilot's seat and a magnetic field probe mounted on the helmet to define helmet pointing positioning. A Helmet Vehicle Interface (HVI) interacts with the aircraft system bus to provide signal generation for the helmet display. This provides significant improvement for close combat targeting and engagement. Hardware is UNCLASSIFIED; technical data and documents are classified up to SECRET.

6. The AN/ALQ-214 is an advanced airborne Integrated Defensive Electronic Countermeasures (IDECM) programmable modular automated system capable of intercepting, identifying, processing received radar signals (pulsed and continuous) and applying an optimum countermeasures technique in the direction of the radar signal, thereby improving individual aircraft probability of survival from a variety of surface-to-air and air-to-air Radio Frequency (RF) threats. The system operates in a standalone or Electronic Warfare (EW) suite mode. In the EW suite mode, the AN/ALQ-214 operates in a fully coordinated mode with the towed dispensable decoy, Radar Warning Receiver (RWR), and the onboard radar in the F/A-18E/F Super Hornet in a coordinated, non-interference manner sharing information for enhanced information. The AN/ALQ-214 was designed to operate in a high-density Electromagnetic Hostile Environment with the ability to identify and counter a wide variety of multiple threats, including those with Doppler characteristics. Hardware within the AN/ALQ-214 is classified CONFIDENTIAL.

7. LAU-127E/A and/or F/A Guided Missile Launchers designed to enable F/A-18E/F Super Hornet aircraft to carry and launch missiles. It provides the electrical and mechanical interface between the missile and launch aircraft as well as the two-way data transfer between missile and cockpit controls and displays to support preflight orientation and control circuits to prepare and launch the missile.

8. The AIM-9X-2 Block II Sidewinder missile represents a substantial increase in missile acquisition and kinematics performance over the AIM-9M and

replaces AIM-9X Block I missile configuration. The missile includes a high off-boresight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Helmet Mounted Cueing System. The software algorithms are the most sensitive portion of the AIM-9X-2 missile. The software continues to be modified via a pre-planned product improvement (P³I) program in order to improve its counter-countermeasure capabilities. No software source code or algorithms will be released. The missile is classified as CONFIDENTIAL.

9. The AIM-9X-2 will result in the transfer of sensitive technology and information. The equipment, hardware, and documentation are classified CONFIDENTIAL. The software and operation performance are classified SECRET. The seeker/guidance control section and the target detector are CONFIDENTIAL and contain sensitive state-of-the-art technology. Manuals and technical documentation that are necessary or support operational use and organizational management are classified up to SECRET. Performance and operating logic of the counter-countermeasures circuits are classified SECRET. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and similar critical information.

10. The AN/AAQ-33 SNIPER Pod is a multi-sensor, electro-optical targeting pod incorporating infrared, low-light television camera, laser range finder/target designator, and laser spot tracker. It is used to provide navigation and targeting for military aircraft in adverse weather and using precision-guided weapons such as laser-guided bombs. It offers much greater target resolution and imagery accuracy than previous systems.

11. The AN/PVS-9 Night Vision Goggles (NVG) provide imagery sufficient for an aviator to complete night time missions down to starlight and extreme low light conditions. The AN/PVS-9 is designed to satisfy the F/A-18E/F mission requirements for covert night combat, engagement, and support. The third generation light amplification tubes provide a high-performance, image-intensification system for optimized F/A-18E/F night flying at terrain-masking altitudes. The AN/PVS-9 NVG's are classified as UNCLASSIFIED but with restrictions on release of technologies.

12. The AN/ALE-47 Countermeasures Dispensing Systems is classified SECRET. The AN/ALE-47 is a threat-adaptive dispensing system that

dispenses chaff, flares, and expendable jammers for self-protection against airborne and ground-based Radio Frequency (RF) and Infrared Threats. The AN/ALE-47 Programmer is classified CONFIDENTIAL. The Operational Flight Program (OFFP) and Mission Data Files (MDF) used in the AN/ALE-47 are classified SECRET. Those software programs contain algorithms used to calculate the best defense against specific threats.

13. The AN/ARC-210 Radio's Line-of-sight data transfer rates up to 80 k/s in a 25 kHz channel creating high-speed communication of critical situational awareness information for increased mission effectiveness. Software that is reprogrammable in the field via Memory Loader/Verifier Software making flexible use for multiple missions. The AN/ARC-210 has embedded software with programmable cryptography for secure communications.

14. The AN/APX-111 Combined Interrogator/Transponder (CIT) with the Conformal Antenna System (CAS) is classified SECRET. The CIT is a complete MARK-XII identification system compatible with Identification Friend or Foe (IFF) Modes 1, 2, 3/A, C and 4 (secure). A single slide-in module that can be customized to the unique cryptographic functions for a specific country provides the systems secure mode capabilities. As a transponder, the CIT is capable of replying to interrogation modes 1, 2, 3/A, C (altitude) and secure mode 4. The requirement is to upgrade Canada's Combined Interrogator/Transponder (CIT) AN/APX-111 (V) IFF system software to implement Mode Select (Mode S) capabilities. Beginning in early 2005, EUROCONTROL mandated the civil community in Europe to transition to a Mode S only system and for all aircraft to be compliant by 2009. The Mode S Beacon System is a combined data link and Secondary Surveillance Radar (SSR) system that was standardized in 1985 by the International Civil Aviation Organization (ICAO). Mode S provides air surveillance using a data link with a permanent unique aircraft address. Selective Interrogation provides higher data integrity, reduced Radio Frequency (RF) interference levels, increased air traffic capacity, and adds air-to-ground data link.

15. The AN/ALE-55 Towed Decoy improves aircraft survivability by providing an enhanced, coordinated on-board/off-board countermeasure response to enemy threats.

16. The Joint Mission Planning System (JMPS) is classified SECRET. JMPS will provide mission planning

capability for support of military aviation operations. It will also provide support for unit-level mission planning for all phases of military flight operations and have the capability to provide necessary mission data for the aircrew. JMPS will support the downloading of data to electronics data transfer devices for transfer to aircraft and weapon systems. A JMPS for a specific aircraft type will consist of basic planning tools called the Joint Mission Planning Environment (JMPE) mated with a Unique Planning Component (UPC) provided by the aircraft program. In addition UPCs will be required for specific weapons, communication devices, and moving map displays. The JMPS will be tailored to the specific releasable configuration for the F/A-18E/F Super Hornet.

17. AN/PYQ-10(C) is the next generation of the currently fielded AN/CYZ-10 Data Transfer Device (DTD). The AN/PYQ-10(C) provides automated, secure and user-friendly methods for managing and distributing cryptographic key material, Signal Operating Instructions (SOI), and Electronic Protection data. This course introduces some of the basic components and activities associated with the AN/PYQ-10(C) in addition to hands-on training. Learners will become familiar with the security features of the Simple Key Loader (SKL), practice the initial setup of the SKL, and will receive and distribute electronic keys using the SKL. Hardware is considered CLASSIFIED.

18. Data Transfer Unit (DTU) with CRYPTO Type 1 and Ground Encryption Device (GED). The DTU (MU-1164(C)/A) has an embedded DAR-400ES. Both versions of the DAR-400 are type 1 devices.

19. Accurate Navigation (ANAV) Global Positioning System (GPS) also includes Key loading Installation and Facility Charges. The ANAV is a 24-channel SAASM based pulse-per-second GPS receiver built for next generation GPS technology.

20. KIV-78 Dual Channel Encryptor Mode 4/Mode 5 Identification Friend or Foe (IFF) Crypto applique includes aircraft installs and initial spares, to ensure proper identification of aircraft during coalition efforts. The KIV-78 provides cryptographic and time-of-day services for a Mark XIIIA (Mode 4 and 5) IFF Combined Interrogator/Transponder (CIT), individual interrogator, and individual transponder. Hardware is considered CLASSIFIED.

21. High Speed Video Network (HSVN) Digital Video Recorder (HDVR) with CRYPTO Type 1 and Ground

Encryption Device (GED). The HDVR has an embedded DAR-400EX and the GED has an embedded DAR-400ES. Both versions of the DAR-400 are Type 1 devices.

22. If a technologically advanced adversary obtains knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

23. A determination has been made that the Government of Canada can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

24. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Canada.

[FR Doc. 2017-20743 Filed 9-27-17; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16-60]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young, (703) 697-9107, pamela.a.young14.civ@mail.mil or Kathy Valadez, (703) 697-9217, kathy.a.valadez.civ@mail.mil; DSCA/DSA-RAN.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16-60 with attached Policy Justification and Sensitivity of Technology.

Dated: September 22, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 08 2017

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-60, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Bahrain for defense articles and services estimated to cost \$2.785 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Hooper".

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)



Transmittal No. 16–60

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Bahrain

(ii) *Total Estimated Value*:

Major Defense Equipment *	\$2.095 billion
Other	\$0.690 billion
Total	\$2.785 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

Major Defense Equipment (MDE):

Nineteen (19) F–16V Aircraft
 Nineteen (19) M61 Vulcan 20mm Gun Systems
 Twenty-two (22) F–16V F–110–GE–129 Engines (includes 3 spares)
 Twenty-two (22) APG–83 Active Electronically Scanned Array Radars (includes 3 spares)
 Twenty-two (22) Modular Mission Computers (includes 3 spares)
 Twenty-two (22) Embedded Global Navigation Systems/LN260 EGI (includes 3 spares)
 Twenty-two (22) Improved Programmable Display Generators (iPDG) (includes 3 spares)
 Thirty-eight (38) LAU–129 Launchers
Non-MDE include:
 Nineteen (19) AN/ALQ–211 AIDEWS Systems, thirty-eight (38) LAU–118A Launchers, forty-two (42) AN/ARC–238 SINGARS Radio or equivalent, twenty-two (22) AN/APX–126 Advanced Identification Friend or Foe (AIFF) system or equivalent, twenty-two (22) cryptographic appliques, secure communication equipment, spares and repair parts, personnel training and training equipment, simulators, publications and technical documentation, U.S. Government and contractor technical support services, containers, missile support and test equipment, original equipment manufacturer integration and test, U.S. Government and contractor technical support and training services, site survey, design, construction studies/analysis/services, associated operations/maintenance/support facilities, cybersecurity, critical computer resources support, force protection and other related elements of logistics and program support.

(iv) *Military Department*: Air Force (X7–D–SAB)

(v) *Prior Related Cases, if any*:

FMS Case BA–D–SGA—\$330,927,474—21 Apr 87

FMS Case BA–D–SGG—\$234,879,152—20 Feb 98

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Annex Attached.

(viii) *Date Report Delivered to Congress*: September 8, 2017

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Government of Bahrain—F–16V Aircraft with Support

The Government of Bahrain has requested a possible sale of nineteen (19) F–16V Aircraft; nineteen (19) M61 Vulcan 20mm Gun Systems; twenty-two (22) F–16V F–110–GE–129 Engines (includes 3 spares); twenty-two (22) APG–83 Active Electronically Scanned Array Radars (includes 3 spares); twenty-two (22) Modular Mission Computers (includes 3 spares); twenty-two (22) Embedded Global Navigation Systems/LN260 EGI (includes 3 spares); twenty-two (22) Improved Programmable Display Generators (iPDG) (includes 3 spares); and thirty-eight (38) LAU–129 Launchers. This sale also includes nineteen (19) AN/ALQ–211 AIDEWS Systems, thirty-eight (38) LAU–118A Launchers, forty-two (42) AN/ARC–238 SINGARS Radio or equivalent, twenty-two (22) AN/APX–126 Advanced Identification Friend or Foe (AIFF) system or equivalent, twenty-two (22) cryptographic appliques, secure communication equipment, spares and repair parts, personnel training and training equipment, simulators, publications and technical documentation, U.S. Government and contractor technical support services, containers, missile support and test equipment, original equipment manufacturer integration and test, U.S. Government and contractor technical support and training services, site survey, design, construction studies/analysis/services, associated operations/maintenance/support facilities, cybersecurity, critical computer resources support, force protection and other related elements of logistics and program support. The total estimated program cost is \$2.785 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a major Non-NATO ally, which has been and continues to be an important security partner in the region. Our mutual defense interests anchor our relationship and the Royal Bahraini Air Force (RBAF) plays a significant role in Bahrain's defense.

The proposed sale improves Bahrain's capability to meet current and future

threats. Bahrain will use the capability as a deterrent to regional threats and to strengthen its homeland defense. This purchase of F–16Vs will improve interoperability with United States and other regional allies. Bahrain employs 20 older F–16 Block 40s and will have no difficulty absorbing these aircraft into its armed forces.

The proposed sale of these aircraft will not alter the basic military balance in the region.

The prime contractor will be Lockheed Martin. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of at least ten (10) additional U.S. Government representatives and approximately seventy-five (75) contractor representatives to Bahrain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–60

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. This sale involves the release of sensitive technology to Bahrain. The F–16C/D Block V weapon system is unclassified, except as noted below. The aircraft uses the F–16 airframe and features advanced avionics and systems. It contains the General Electric F–110–129 engine, AN/APG–83 radar, digital flight control system, internal and external electronic warfare (EW) equipment, Advanced Identification Friend or Foe (AIFF), operational flight trainer, and software computer programs.

2. Sensitive or classified (up to SECRET) elements of the proposed F–16V include hardware, accessories, components, and associated software: AN/APG–83 AESA Radars, Modular Mission Computers, Advanced Identification Friend or Foe (AIFF), cryptographic appliques, Embedded Global Positioning System/Inertial Navigation System, Modular Mission Computer (MMC), AN/ALQ–211 AIDEWS Systems, LAU–129 Launchers, Modular Mission Computers, and Improved Programmable Display Generators (iPDGs). Additional sensitive areas include operating manuals and maintenance technical orders containing performance information, operating and test procedures, and other information related to support operations and repair. The hardware,

software, and data identified are classified to protect vulnerabilities, design and performance parameters and other similar critical information.

3. The AN/APG-83 is an Active Electronically Scanned Array (AESA) radar upgrade for the F-16V. It includes higher processor power, higher transmission power, more sensitive receiver electronics, and synthetic aperture radar (SAR), which creates higher-resolution ground maps from a greater distance than existing mechanically scanned array radars (e.g., APG-68). The upgrade features an increase in detection range of air targets, increases in processing speed and memory, as well as significant improvements in all modes. The highest classification of the radar is SECRET.

4. AN/ALQ-211 Airborne Integrated Defensive Electronic Warfare Suite (AIDEWS) System provides passive radar warning, wide spectrum RF jamming, and control and management of the entire EW system. Commercially developed system software and hardware is UNCLASSIFIED. The system is classified SECRET when loaded with a U.S. derived EW database, which will be provided.

5. The secure voice communications radio system is considered unclassified, but may employ cryptographic technology that is classified SECRET. Classified elements include operating characteristics, parameters, technical data, and keying material.

6. An Advanced Identification Friend or Foe (AIFF) is a system capable of transmitting and interrogating Mode V. It is UNCLASSIFIED unless Mode IV or Mode V operational evaluator parameters are loaded into the equipment that is classified SECRET. Classified elements of the AIFF system include software object code, operating characteristics, parameters, and technical data.

7. The Embedded GPS-INS (EGI) LN-260 is a sensor that combines GPS and inertial sensor inputs to provide accurate location information for navigation and targeting. The EGI LN-260 is UNCLASSIFIED. The GPS crypto-variable keys needed for highest GPS accuracy are classified up to SECRET.

8. The LAU-129 Guided Missile Launcher is capable of launching a single AIM-9 (Sidewinder) family of missile or a single AIM-120 Advanced Medium Range Air-to-Air Missile (AMRAAM). The LAU-129 provides mechanical and electrical interface between missile and aircraft. The LAU-129 system is UNCLASSIFIED.

9. The Modular Mission Computer (MMC) is the central computer for the F-16. As such it serves as the hub for

all aircraft subsystems, avionics, and weapons. The hardware and software (Operational Flight Program—OFP) are classified up to SECRET.

10. An Improved Programmable Display Generator (iPDG) will support the two color MFD's, allowing the pilot to set up to twelve display programs. One of them includes a color Horizontal Situation Display, which will provide the pilot with a God's eye view of the tactical situation. Inside is a 20MHz, 32-bit Intel 80960 Display Processor and a 256K battery-backed RAM system memory. The color graphics controller is based on the T.I. TMS34020 Raster Graphics Chipset. The iPDG also contains substantial growth capabilities including a high-speed Ethernet interface (10/100BaseT) and all the hardware necessary to support digital moving maps. The digital map function can be enabled by the addition of software. The hardware and software are UNCLASSIFIED.

11. M61A1 20mm Vulcan Cannon: The 20mm Vulcan cannon is a six barreled automatic cannon chambered in 20x120mm with a cyclic rate of fire from 2,500-6,000 shots per minute. This weapon is a hydraulically powered air cooled Gatlin gun used to damage/destroy aerial targets, suppress/incapacitate personnel targets, and damage or destroy moving and stationary light materiel targets. The M61A1 and its components are UNCLASSIFIED.

12. Software, hardware, and other data or information, which is classified or sensitive, is reviewed prior to release to protect system vulnerabilities, design data, and performance parameters. Some end-item hardware, software, and other data identified above are classified at the CONFIDENTIAL and SECRET level. Potential compromise of these systems is controlled through management of the basic software programs of highly sensitive systems and software-controlled weapon systems on a case-by-case basis.

13. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software source code in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of systems with similar or advance capabilities.

14. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive

technology were revealed to unauthorized persons.

15. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

16. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Bahrain.

[FR Doc. 2017-20719 Filed 9-27-17; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2017-ICCD-0104]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; an Impact Evaluation of Training in Multi-Tiered Systems of Support for Behavior (MTSS-B)

AGENCY: Institute of Education Sciences (IES), 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 30, 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-0104. 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 Lauren Angelo, 202-245-7276.

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: An Impact Evaluation of Training in Multi-Tiered Systems of Support for Behavior (MTSS-B).

OMB Control Number: 1850-0921.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 2,568.

Total Estimated Number of Annual Burden Hours: 457.

Abstract: This submission requests approval of a third year of select data collection activities that will be used to support the Impact Evaluation of Training in Multi-Tiered Systems of Support for Behavior (MTSS-B). The evaluation will estimate the impact on school staff practices, school climate, and student outcomes of providing training and support in the MTSS-B framework plus universal (Tier I) positive behavior supports and targeted (Tier II) interventions across two years. The third year of data collection will provide information on sustainability, the capacity of schools to continue implementation after the study-supported training and support are complete, as well as district efforts to

scale-up the intervention in other schools.

Dated: September 25, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017-20820 Filed 9-27-17; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2017-ICCD-0102]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2017-18 National Postsecondary Student Aid Study Administrative Collection (NPSAS:18-AC)

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 30, 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-0102. 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: 2017-18 National Postsecondary Student Aid Study Administrative Collection (NPSAS: 18-AC).

OMB Control Number: 1850-0666.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 10,804.

Total Estimated Number of Annual Burden Hours: 63,335.

Abstract: This request is to conduct the 2017-18 National Postsecondary Student Aid Study, Administrative Collection (NPSAS:18-AC). This study is being conducted by the National Center for Education Statistics (NCES). NPSAS is a nationally representative study of how students and their families finance education beyond high school. The first NPSAS was implemented by NCES during the 1986-87 academic year to meet the need for national data about significant financial aid issues. Since 1987, NPSAS has been fielded every 3 to 4 years, most recently during the 2015-16 academic year (NPSAS:16). This submission is for NPSAS:18-AC, which departs from the design of previous NPSAS studies in three respects: It is anticipated to include state-representative estimates for undergraduate students overall and in public 2-year and public 4-year institutions; it will provide financial aid estimates 2-years earlier than how the studies were previously scheduled; and

it will be the first NPSAS study without a student interview component. Future NPSAS collections will continue to include a student interview every four years (NPSAS:16, NPSAS:20, NPSAS:24) to yield nationally representative data. In alternating cycles, an Administrative Collection (NPSAS:18-AC, NPSAS:22-AC, and NPSAS:26-AC) will be conducted in which only administrative data from the Department's data systems and institutional student records will be compiled to yield state representative data. This submission covers materials and procedures related to enrollment list collection, student record abstractions, and matching to administrative data files as part of the NPSAS:18-AC data collection.

Dated: September 25, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017-20780 Filed 9-27-17; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL17-92-000]

East Texas Electric Cooperative, Inc.; Notice of Filing

Take notice that on September 20, 2017, East Texas Electric Cooperative, Inc. filed an application for cost-based revenue requirements schedule for reactive power production capability.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on October 11, 2017.

Dated: September 21, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017-20786 Filed 9-27-17; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2428-007]

Aquenergy Systems, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 2428-007.

c. *Date filed:* December 30, 2015.

d. *Applicant:* Aquenergy Systems, LLC (Aquenergy).

e. *Name of Project:* Piedmont Hydroelectric Project.

f. *Location:* The existing project is located on the Saluda River in the Town of Piedmont, in Anderson and Greenville Counties, South Carolina. The project does not affect federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Beth E. Harris, P.E., Regional Operations Manager, Enel Green Power North America, Inc., 11 Anderson Street, Piedmont, SC 29673; Telephone—(864) 846-0042; Email—beth.harris@enel.com OR Kevin Webb, Hydro Licensing Manager, Enel Green Power North America, Inc., One Tech Drive, Suite 220, Andover, MA 01810; Telephone—(978) 681-1900; Email—kevin.webb@enel.com.

i. *FERC Contact:* Navreet Deo, (202) 502-6304, or navreet.deo@ferc.gov.

j. *Deadline for filing motions to intervene and protests and requests for cooperating agency status:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests and requests for cooperating agency status using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-2428-007.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *The Piedmont Project consists of:* (1) A 600-foot-long by 25-foot-high stone masonry dam, consisting of (i) a 200-foot-long non-overflow section, (ii) a 200-foot-long central overflow spillway topped with 16-inch wooden flashboards, and (iii) a 200-foot-long non-overflow spillway housing the inoperable J.P. Stevens Canal intake; (2) a 22-acre impoundment at a normal pool elevation of 774 feet mean sea level; (3) a 144-foot-long by 81-foot-wide intake canal consisting of eight gates at the head of the canal controlling flow to the powerhouse; (4) a 55-foot-long by 55-foot-wide brick masonry powerhouse protected by a trashrack structure with 2-inch clear bar spacing, located 120 feet downstream of the dam, containing one vertical Francis turbine generating unit that totals 1,000 kilowatt (kW); (5) a 180-foot-long by 38-foot-wide tailrace; (6) a 263-foot-long, 600-volt transmission line connecting the powerhouse to the non-project substation; and (7) appurtenant facilities.

Aquenergy operates the project in a run-of-river mode, with no useable storage or flood control capacity. A continuous minimum flow of 15 cubic feet per second (cfs) or inflow, whichever is less, is released into the bypassed area. The minimum flow is

achieved via a weir on the spillway crest. The project operates under an estimated average head of 26 feet, including the 16-inch spillway flashboards. The impoundment water surface elevation is maintained at 774 feet. River flows between 159 cfs and 535 cfs are used for power generation, while flows in excess of 535 cfs are passed over the flashboards and spillway. The total installed capacity of the project is 1,000 kW from the single generating unit. The project generates approximately 5,369 megawatt-hours annually, which are sold to a local utility.

Aquenergy proposes to continue to operate and maintain the Piedmont Project as is required in the existing license, and to develop canoe portage facilities. No changes to project operations are proposed. Other than the development of canoe portage facilities, no new construction or major project modifications are proposed.

m. A copy of the application is available for 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, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) Bear in all capital letters the title PROTEST or MOTION TO INTERVENE; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies

may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: September 21, 2017.

Kimberly D. Bose,
Secretary.

[FR Doc. 2017-20787 Filed 9-27-17; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10254-026]

Pelzer Hydro Company, LLC, Consolidated Hydro Southeast, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* New License.
- b. *Project No.:* 10254-026.
- c. *Date filed:* November 30, 2015.
- d. *Applicant:* Pelzer Hydro Company, LLC (Pelzer Hydro), Consolidated Hydro Southeast, LLC (Consolidated Hydro).
- e. *Name of Project:* Upper Pelzer Hydroelectric Project.
- f. *Location:* The existing project is located on the Saluda River in the Town of Pelzer, in Anderson and Greenville Counties, South Carolina. The project does not affect federal land.
- g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact:* Beth E. Harris, P.E., Regional Operations Manager, Enel Green Power North America, Inc., 11 Anderson Street, Piedmont, SC 29673; Telephone—(864) 846-0042; Email—beth.harris@enel.com OR Kevin Webb, Hydro Licensing Manager, Enel Green Power North America, Inc., One Tech Drive, Suite 220, Andover, MA 01810; Telephone—(978) 681-1900; Email—kevin.webb@enel.com.
- i. *FERC Contact:* Navreet Deo, (202) 502-6304, or navreet.deo@ferc.gov.
- j. *Deadline for filing motions to intervene and protests and requests for cooperating agency status:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests and requests for cooperating agency status using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online

Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-10254-026.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *The Upper Pelzer Project consists of:* (1) A 505-foot-long by 29.7-foot-high granite masonry dam, consisting of (i) a 150-foot-long non-overflow section, (ii) a 280-foot-long ungated overflow spillway topped with 4-foot wooden flashboards, and (iii) a 75-foot-long gated intake section containing six gates; (2) a 25-acre impoundment at a normal pool elevation of 718.7 feet mean sea level, as measured at the top of the flashboards; (3) a 260-foot-long by 52-foot-wide forebay canal channeling flow from 6 canal gates to the project's 2 powerhouses; (4) an upstream concrete powerhouse, protected by a 65-foot-long trashrack structure with 5.5-inch clear bar spacing for 38 feet of length, and 2-inch clear bar spacing for 27 feet of length, containing two vertical Francis turbine generating units that total 1,500 kW (kW); (5) a downstream powerhouse, protected by a trashrack structure with 2-inch clear bar spacing, containing one vertical Francis turbine generating unit that totals 450 kW; (6) a 95-foot-long by 74-foot-wide tailrace extending from the upstream powerhouse, and a 132-foot-long by 24-foot-wide tailrace extending from the downstream powerhouse; (7) a 65-foot-long, 3,300-volt transmission line, connecting the upper and lower powerhouses with the grid via a 7.2/12.47 kilovolt transformer; and (8) appurtenant facilities.

Pelzer Hydro and Consolidated Hydro (co-licensees) operate the project in a run-of-river mode, with no useable storage or flood control capacity. There are no minimum flow requirements downstream of the dam. The project operates under an estimated average head of 25 feet, including the 4-foot spillway flashboards. The impoundment

water surface elevation is maintained at 718.7 feet. River flows between 159 cubic feet per second (cfs) and 1,200 cfs are used for power generation, while flows in excess of 1,200 cfs are passed over the spillway. A single manually operated, low level outlet gate located in the unregulated spillway portion of the dam is used to drain the impoundment during maintenance activities. The total installed capacity of the project is 1,950 kW between the three generating units. The project generates approximately 6,223 megawatt-hours annually, which are sold to a local utility.

The co-licensees propose to continue to operate and maintain the Upper Pelzer Project as is required in the existing license, and to develop canoe portage facilities. The co-licensees also propose to release a continuous minimum flow of 15 cfs or inflow, whichever is less, from the project dam in order to maintain aquatic habitat and water quality conditions in the 115-foot-long reach between the dam and the upstream powerhouse tailrace.

Other than the development of canoe portage facilities, no new construction or major project modifications are proposed.

m. A copy of the application is available for 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, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) Bear in all capital letters the title *protest* or *motion to intervene*; (2) set forth in the heading the name of the applicant and the project number of the application to

which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: September 21, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017-20789 Filed 9-27-17; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10253-032]

Pelzer Hydro Company, LLC, Consolidated Hydro Southeast, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* New License.
- b. *Project No.:* 10253-032.
- c. *Date filed:* November 30, 2015.
- d. *Applicant:* Pelzer Hydro Company, LLC (Pelzer Hydro), Consolidated Hydro Southeast, LLC (Consolidated Hydro).
- e. *Name of Project:* Lower Pelzer Hydroelectric Project.
- f. *Location:* The existing project is located on the Saluda River near the Towns of Pelzer and Williamston, in Anderson and Greenville Counties, South Carolina. The project does not affect federal land.
- g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact:* Beth E. Harris, P.E., Regional Operations Manager, Enel Green Power North America, Inc., 11 Anderson Street Piedmont, SC 29673; Telephone—(864) 846-0042; Email—beth.harris@enel.com OR Kevin Webb, Hydro Licensing Manager, Enel Green Power North America, Inc., One Tech Drive, Suite 220, Andover, MA 01810; Telephone—(978) 681-1900; Email—kevin.webb@enel.com.

i. *FERC Contact:* Navreet Deo, (202) 502-6304, or navreet.deo@ferc.gov.

j. *Deadline for filing motions to intervene and protests and requests for cooperating agency status:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests and requests for cooperating agency status using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The first page of any filing should include docket number P-10253-032.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The Lower Pelzer Project consists of: (1) A 696-foot-long by 40-foot-high granite masonry dam, consisting of (i) a 310-foot-long spillway section topped with 4-foot wooden flashboards, (ii) a 40-foot-long non-overflow section with two 10-foot-wide by 6-foot-high gates, and (iii) a 236-foot-long non-overflow section; (2) an 80-acre impoundment at a normal pool elevation of 693 feet mean sea level; (3) a 110-foot-long by 14-foot-wide intake, protected by a trashrack structure with 2-inch clear bar spacing, controlling flow to the powerhouse through five, 10.5-foot-wide square gates; (4) a 110-foot-long by 68-foot-wide brick powerhouse integral with the dam, containing 5 horizontal Francis turbine generating units that total 3,300 kilowatts (kW); (5) a 600-foot-long by 110-foot-wide tailrace; (6) a 3-mile-long, 3,300-volt transmission line connecting the powerhouse to the grid via a 7.2/12.47 kilovolt transformer; and (7) appurtenant facilities.

Pelzer Hydro and Consolidated Hydro (co-licensees) operate the project in a run-of-river mode, with no storage or flood control capacity. A continuous minimum flow of 140 cubic feet per second (cfs) or inflow, whichever is less, is released into the bypassed reach. The minimum flow is achieved via a sluice gate in the dam. The project operates under an estimated average head of 40 feet, including the 4-foot spillway flashboards. The impoundment water surface elevation is maintained at 693

feet. River flows between 159 and 1,408 cfs are used for power generation, while flows in excess of 1,408 cfs are passed over the flashboards and spillway. Flow to the generating units is controlled by five manually operated square slide gates. The total installed capacity of the project is 3,300 kW between the five generating units. The project generates approximately 8,784 megawatt-hours annually, which are sold to a local utility.

The co-licensees propose to continue to operate and maintain the Lower Pelzer Project as is required in the existing license, and to develop canoe portage facilities. The co-licensees also propose to remove the existing three-mile-long, 3,300-volt overhead transmission line, which is no longer in use, from the project boundary under a new license. Instead, the project would use a 165-foot-long, 3,300-volt transmission line that interconnects with the grid at an applicant-owned transformer.

No changes to project operations are proposed. Other than the development of canoe portage facilities, no new construction or major project modifications are proposed.

m. A copy of the application is available for 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, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) Bear in all capital letters the title PROTEST or MOTION TO INTERVENE; (2) set forth in the

heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: September 21, 2017.

Kimberly D. Bose,
Secretary.

[FR Doc. 2017-20788 Filed 9-27-17; 8:45 am]

BILLING CODE 6717-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (OMB Nos. 3064-0085 and 3064-0120)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collections were previously published in the **Federal Register** on July 6, 2017, allowing for a 60-day comment.

DATES: Comments are encouraged and will be accepted for an additional 30 days until October 30, 2017.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- <http://www.FDIC.gov/regulations/laws/federal/notices.html>
- Email: comments@fdic.gov. Please include the name and OMB control number of the relevant information collection in the subject line of the message.

- Mail: Manny Cabeza, Counsel, Room MB-3007, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

- Hand Delivery: Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, attention FDIC Desk Officer, New Executive Office Building, Washington DC 20503 or sent to OIRA_submissions@omb.eop.gov.

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 any proposed information collection instrument and instructions, or desire any other additional information, please contact Manny Cabeza, Counsel, FDIC Legal Division either by mail at Room MB-3007, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429; by email at mcabeza@fdic.gov; or by telephone at (202) 898-3767.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collections of information are encouraged. All comments received will become a matter of public record. 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 has practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed information collection, 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
- Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Overview of the Information Collection Request

1. *Title:* Record Keeping, Reporting and Disclosure Requirements in Connection with the Equal Credit Opportunity Act Regulation B.

OMB Number: 3064-0085.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:¹

Source and burden	Number of respondents	Annual frequency	Total responses	Average time per response (Minutes)	Estimated annual burden (Hours)
Reporting burden:					
Credit Reporting History (1002.10)	3,711	1,333	4,946,763	1	82,466
Demographic Information Collected for Monitoring Purposes (1002.13(a)&(b))	3,711	279	1,035,369	1	17,256
Total Reporting .....	.....	.....	.....	.....	99,702
Disclosure Burden:					
Disclosure for Optional Self-Test (1002.5)	50	1	50	2	2
Notification (1002.9)	3,711	333	1,235,763	3	61,788
Appraisal Report (1002.14(a)(1))	3,711	279	1,035,369	3	51,768
Disclosure of Information Collected for Monitoring Purposes(1002.13(c))	3,711	279	1,035,369	1	17,256
Notice of Right to Appraisal (1002.14(a)(2))	3,711	279	1,035,369	1	17,256
Total Disclosure .....	.....	.....	.....	.....	148,071
Recordkeeping Burden:					
Record Retention (Applications, Actions, Pre-Screened Solicitations)(1002.12)	3,711	1,333	4,946,763	3	247,338
Record Retention (Self-Testing)(1002.12)(b)(6)	50	1	50	3	3
Total Recordkeeping .....	.....	.....	.....	.....	247,341
Total Burden Hours .....	.....	.....	.....	.....	495,113

General Description of Collection: Regulation B (12 CFR part 1002) issued by the Consumer Financial Protection Bureau, prohibits creditors from discriminating against applicants on any bases specified by the Equal Credit Opportunity Act; imposes, reporting, record keeping and disclosure requirements; establishes guidelines for gathering and evaluating credit information; and requires creditors to give applicants certain written notices. There is no change in the method or substance of the collection. The overall 107,276 hour reduction in total estimated annual burden (from 602,389 to 495,113 hours) is a result of economic fluctuation reflected in a reduction in the number of FDIC-supervised institutions, and because of the revision of the FDIC's estimates of the number of responses and the average time required to respond to the various information collections tasks.

Changes to Data and Assumptions: The burden estimates shown above include several changes from the estimates the FDIC previously provided for this information collection. The FDIC currently supervises 3,711 insured financial institutions, a decrease of 687 from the 4,398 reported in 2014. Whereas the FDIC previously estimated that 25 percent (1,100) of its supervised institutions would conduct optional

self-testing, the FDIC's experience shows that very few banks actually conduct these optional tests; our revised estimate of 50 banks is likely high. The FDIC has also updated the annual frequencies for each burden. The FDIC believes the prior estimate of 850 approved loans per year, on average, was too low and has increased its estimate to 1,000. The agency has also corrected the frequencies for sections 1002.5 and 1002.12 which are completed only once per year. As a conservative estimate, FDIC assumes that the denial rate for residential real estate loans applications for covered institutions is 14 percent. According to Home Mortgage Disclosure Act (HMDA) data from 2015, the denial rate for conventional home-purchase loan applications was 10.8 percent, and the denial rate for nonconventional home-purchase loans was 13.9 percent.² Call report data from June 30, 2017 shows that approximately 24 percent of total loan and lease balances are residential real estate loans (RRE), so, for purposes of estimating burden, FDIC assumes that 24 percent of the number of loans relate to RRE. The FDIC estimates that approximately 25 percent of non-RRE loans are denied.

The foregoing assumptions result in the following estimates:
 1,000 loans approved/(1 – 25 percent) = 1,333 loan applications

1,333 loan applications × 25 percent = 333 loans denied
 1,000 loans approved × 24 percent = 240 RRE loans
 240 RRE loans/(1 – 14 percent) = 279 RRE loan applications

The table above now includes the burden estimate for section 1002.13 that was inadvertently omitted from prior information collection submissions. Section 1002.13(a), to monitor compliance, requires lenders to collect demographic information from loan applicants either on the application form or on a separate form. Section 1002.13(b) & (c) involve disclosing to loan applicants the purpose and use of this demographic information.

The burden table also deletes the prior estimated burden for 1002.15 which only describes the eligibility for incentives for self-testing and self-correction and does not involve any disclosures, reporting, or recordkeeping requirements.

The FDIC has updated its estimate of the number of burden hours required to complete each task. It has estimated a burden of one to three minutes for most tasks (0.017 to 0.05 hours), a figure not significantly different from the prior estimates. However, the FDIC believes that the prior burden estimates for self-testing were greatly overstated. Whereas previously, self-testing under section 1002.12 was estimated to require two (2) hours to complete, the FDIC believes the recordkeeping requirement articulated

¹ The average hours per response shown in the table are rounded, but the Estimated Annual Burden is calculated using the full decimal and then is rounded to the nearest hour.

² Federal Reserve Bulletin, November 2016, Vol. 102, No. 6.

in the rule should take only 3 minutes (0.05 hours) to complete.

2. *Title:* Flood Insurance.
OMB Number: 3064–0120.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

TABLE 1—BURDEN CALCULATION

Item	Share of burden	Hours	Share	Hours	Hours	Total hours
1. Disclosure to the Borrower	50%	0.50	90%	0.45	0.225	25,097
2. Disclosure to the Servicer					0.225	25,097
3. Report to FEMA of a Change in Servicer			10%	0.05	0.05	5,577
4. Recordkeeping (Bank keeps a copy of all notifications)	50	0.50		0.50	0.50	55,770
		1.0		1.0	1.0	111,540
Respondents (FDIC supervised banks with real estate loans)						3,718
Frequency (Average no. of real estate loans serviced w/flood ins)						30
Total burden						111,540

Sources: FDIC, FEMA, Federal Reserve Board.

General Description of Collection:

Each supervised lending institution is currently required to provide a notice of special flood hazards to each borrower with a loan secured by a building or mobile home located or to be located in an area identified by the Director of the Federal Emergency Management Agency as being subject to special flood hazards. The Riegle Community Development Act requires that each institution also provide a copy of the notice to the servicer of the loan (if different from the originating lender).

There is no change in the method or substance of the collection. There is an overall reduction in burden hours which is the result of (1) economic fluctuation reflected by a decrease in the number of FDIC-supervised institutions and (2) a decrease in the number of flood insurance policies nationally. In particular, the number of respondents and the frequency of response (number of loans) have decreased while the hours per response remain the same.

Changes to Data and Assumptions: FDIC estimates total annual burden to be 111,540 hours. To obtain this figure, FDIC relied on: (a) Data from the Federal Emergency Management Agency (FEMA) as of May 2017; (b) FDIC Call Report data as of March 31, 2017; and (c) Federal Reserve Board mortgage data as of March 31, 2017.

FEMA reported there were 4,983,954 flood insurance policies in effect with a total insured value of \$1,238,657,149,400.³

FDIC Call Report data showed that as of March 31, 2017, there were a total of 5,790 FDIC-insured institutions with a total of \$4.25 trillion in 1–4 family;

multifamily; nonfarm, nonresidential, and agricultural loans secured by real estate. As of March 31, 2017, there were 3,718 FDIC-regulated institutions with a total value of about \$1.19 trillion in these loans. Based on the foregoing, we estimate that FDIC-regulated banks hold 27.9% of these assets.

The Federal Reserve Board reported \$14.41 trillion in mortgage debt outstanding in the U.S., with \$4.63 trillion (32.4%) held by depository institutions.⁴ Since this total debt held by banks is close to the value of these real estate loans from Call Report data, we have confidence that we can meld the data sets for estimation purposes. We therefore assume that 32.4% of the value of flood insurance policies will be held by U.S. commercial banks: \$401 billion.

In the absence of any data on the number of real estate loans with flood insurance at any bank, we resort to apportion 32.4% of the number of flood insurance policies (1,614,801) to commercial banks, and 27.9% of those to FDIC-regulated institutions (451,177). Because the value of property varies greatly between different geographical regions and different banks, it is doubtful that this estimation of the number of policies is accurate. However, there exists no other reasonable method for deriving the number of policies at each bank given available data.

Next, we apportioned the 451,177 flood insurance policies to each FDIC-regulated institution according to its share of real estate loans to total real estate loans. The resulting

apportionment results in an average of 121 policies per bank, and a median of 30 policies per bank. Because the average is skewed by the large number of policies at large banks, we believe the median is a better measure for calculating burden hours.

Our subject-matter experts (SMEs) for this rule believe that the total burden to the public for complying with this rule is 1.0 hours per policy. We find four PRA related tasks in this rule: (1) Disclosure to Borrowers, (2) Disclosure to Servicers, (3) Reporting to FEMA of Changes in Coverage, and (4) Recordkeeping for tasks 1–3 above. We assume that Recordkeeping will comprise ½ hour, and the remaining ½ is split between the other tasks. We assume that 90% of policies will involve a new origination, and 10% of policies will involve a change in status.

With 3,718 respondents holding a median of 30 policies and 1 hour of burden per policy, we calculate a total burden of 111,540 hours. This burden is apportioned to each task as shown in Table 1 above.

Dated at Washington, DC, this 22nd day of September, 2017. Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2017–20759 Filed 9–27–17; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval,

³ <https://www.fema.gov/flood-insurance-statistics-current-month> (accessed June 15, 2017).

⁴ <https://www.federalreserve.gov/econresdata/releases/mortoutstand/mortoutstand20170331.htm> (accessed June 15, 2017).

pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 2017.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566. Comments can also be sent electronically to

Comments.applications@clev.frb.org:

1. *First Mutual Holding Co.*, Lakewood, Ohio; to acquire Doolin Security Savings Bank, FSB, New Martinsville, West Virginia.

Board of Governors of the Federal Reserve System, September 25, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017-20811 Filed 9-27-17; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget ("OMB") to extend for an additional

three years the current Paperwork Reduction Act ("PRA") clearance for information collection requirements contained in the Commission's Business Opportunity Rule ("Rule"). That clearance expires on January 31, 2018.

DATES: Comments must be submitted by November 27, 2017.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Business Opportunity Rule Paperwork Comment, FTC File No. P114408" on your comment, and file your comment online at <https://ftcpublishcommentworks.com/ftc/BusinessOpportunityRulePRA> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be addressed to Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., CC-8528, Washington, DC 20580, (202) 326-3711.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Business Opportunity Rule, 16 CFR part 437 (OMB Control Number 3084-0142).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of

the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Business Opportunity Rule requires business opportunity sellers to furnish to prospective purchasers a disclosure document that provides information relating to the seller, the seller's business, the nature of the proposed business opportunity, as well as additional information regarding any claims about actual or potential sales, income, or profits for a prospective business opportunity purchaser. The seller must also preserve information that forms a reasonable basis for such claims. These disclosure and recordkeeping requirements are subject to the PRA.

The Rule is designed to ensure that prospective purchasers of a business opportunity receive information that will help them evaluate the opportunity that is presented to them. Sellers must disclose five key items of information in a simple, one-page document:

- The seller's identifying information;
- whether the seller makes a claim about the purchaser's likely earnings (and, if the seller checks the "yes" box, the seller must provide information supporting any such claims);
- whether the seller, its affiliates or key personnel have been involved in certain legal actions (and, if yes, the seller must provide a separate list of those actions);
- whether the seller has a cancellation or refund policy (and, if yes, the seller must provide a separate document stating the material terms of such policies); and
- a list of persons who bought the business opportunity within the previous three years.

Misrepresentations and omissions are prohibited under the Rule, and for sales conducted in languages other than English, all disclosures must be provided in the language in which the sale is conducted.

PRA Burden Analysis

Subject to public comment to shed further light, the FTC retains its respondent population estimates from its prior OMB clearance for the information collection requirements

under the Rule.¹ Thus, FTC staff estimates there are approximately 3,050 business opportunity sellers covered by the Rule, including vending machine, rack display, work-at-home, and other opportunity sellers. Staff also estimates that approximately 10% of the 3,050 business opportunity sellers covered by the Rule reflects an equal amount of new and departing business entrants (thus, for simplicity, staff assumes that, for a given year, there are 2,745 existing business opportunity sellers plus 305 new entrants to the field). Additionally, staff estimates that approximately 165 of business opportunity sellers market business opportunities in Spanish (in addition to English) and approximately 95 sellers market in languages other than English or Spanish² (in addition to English).

A. Estimated Hours Burden

The burden estimates for compliance will vary depending on the particular business opportunity seller's prior experience with the Rule. Commission staff estimates that the projected 2,745 existing business opportunity sellers will require no more than approximately two hours to update the disclosure document [5,490 total hours]. Staff further projects that the estimated 305 new business opportunity sellers will require no more than approximately five hours to develop the disclosure document [1,525 total hours]. Both existing and new business opportunity sellers will require approximately one hour to file and store records [3,050 total hours], for a cumulative total of 10,065 hours [5,490 hours + 1,525 hours + 3,050 hours] per year to meet the Rule's disclosure and recordkeeping requirements.

B. Estimated Labor Cost

Labor costs are determined by applying applicable wage rates to associated burden hours. Commission staff assumes that an attorney likely would prepare or update the disclosure

document at an estimated hourly rate of \$250. Accordingly, staff estimates that cumulative labor costs are \$2,516,250 [10,065 hours × \$250 per hour].

C. Estimated Non-Labor Costs

1. Printing and Mailing of the Disclosure Document

Business opportunity sellers must also incur costs to print and distribute the single-page disclosure document, plus any attachments. These costs vary based upon the length of the attachments and the number of copies produced to meet the expected demand. Commission staff estimates that 3,050 business opportunity sellers will print and mail approximately 1,000 disclosure documents per year at a cost of \$1.00 per document, for a total cost of \$3,050,000. Conceivably, many business opportunity sellers will elect to furnish disclosures electronically; thus, the total cost could be much less.

2. Translating the Required Disclosures Into a Language Other Than English

The Rule requires that sellers update their disclosures. The costs associated with translating the disclosures will vary depending upon a business opportunity seller's prior experience with the Rule and the language the seller uses to market the opportunity. For example, existing and new business opportunity sellers marketing in Spanish will not incur costs to translate the disclosure document as Appendices A and B to the Rule provide, respectively, illustrations of the requisite disclosure documents in English and Spanish. Existing sellers, regardless of the non-English language used to present disclosures, may incur translation costs to update the document. New entrants that market business opportunities in languages other than English or Spanish (in addition to an assumed use of disclosure documents in English) will incur translation costs to translate Appendix A from English and to enter equivalent responses in these other languages.

As stated above, using assumptions informed by Census data (see footnote 2), FTC staff estimates that 165 sellers market business opportunities in Spanish and an additional 95 sellers market in languages other than English or Spanish. This includes an estimated 10 new entrants in the latter sub-category (based on the assumption that 10% yearly of a given group consists of new entrants with an equal offset for departing business entities). Those new entrants will incur initial translation

costs to draft a disclosure document consistent with Appendix A to the Rule.

There are 485 words in Appendix A to the Rule. Therefore, the total cost burden to translate the disclosure document for the 10 new business opportunity sellers marketing in a language other than English or Spanish will be approximately \$849 [10 sellers × (17.5 cents³ per word × 485 words)].

For purposes of this PRA analysis, staff assumes that both new and existing business opportunity sellers marketing business opportunities in languages other than English [260 sellers]: (1) Are marketing in both English and another language; (2) are not incorporating any existing materials into their disclosure document; (3) have been the subject of civil or criminal legal actions; (4) are making earnings claims; (5) have a refund or cancellation policy; and (6) because of all of the above assumptions, require approximately 250 words (approximately one standard, double-spaced page) to translate their updates, in the case of existing business opportunity sellers, or supply and translate their initial disclosures, in the case of new business opportunity sellers. Therefore, the total cost to translate the updates or to translate from English the initial disclosures is approximately \$11,375 [260 sellers × (17.5 cents per word × 250 words)].

Thus, cumulative estimated non-labor costs are \$3,062,224 (\$3,050,000 + \$849 + \$11,375).

Request for Comment

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before November 27, 2017. Write "Business Opportunity Rule Paperwork Comment, FTC File No. P114408" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the

³ Staff estimates that it will cost approximately 17.5 cents to translate each word into the language the sellers use to market the opportunities.

¹ 79 FR 73074 (Dec. 9, 2014).

² To estimate how many of the 3,050 sellers market business opportunities in languages other than English, FTC staff relies upon 2015 United States Census Bureau ("Census") data. http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_S1601&prodType=table. Calculations based upon this data reveal that approximately 5.4% of the United States population speaks Spanish at home and speaks English less than "very well." Calculations based upon that same survey reveal that approximately 3.1% of the United States population speaks a language other than Spanish or English at home and speak English less than "very well." Staff thus projected that 5.4% of all entities selling business opportunities market in Spanish and 3.1% of all entities selling business opportunities market in languages other than English or Spanish.

Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/BusinessOpportunityRulePRA> by following the instructions on the web-based form. When this Notice appears at <http://www.regulations.gov/#/home>, you also may file a comment through that Web site.

If you file your comment on paper, write “Business Opportunity Rule Paperwork Comment, FTC File No. P114408” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610, Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Web site at <https://www.ftc.gov/>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual

and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Web site—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC Web site, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 27, 2017. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

David C. Shonka,

Acting General Counsel.

[FR Doc. 2017–20846 Filed 9–27–17; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No.: 0970–NEW]

Submission for OMB Review; Comment Request; Child Care and Development Fund Quality Progress Report

Description: Lead Agencies are required to spend a certain percent of their Child Care and Development Fund (CCDF) awards on activities to improve the quality of child care. Lead Agencies are also required to invest in at least one of 10 allowable quality activities included in the Child Care and Development Block Grant (CCDBG) Act of 2014. In order to ensure that States and Territories are meeting these requirements, the CCDBG Act and the CCDF final rule require Lead Agencies to submit an annual report, identified as the Quality Progress Report in the CCDF final rule. The report must describe how quality funds were expended, including what types of activities were funded and

measures used to evaluate progress in improving the quality of child care programs and services. The QPR replaces the Quality Performance Report that was previously an appendix to the CCDF Plan. The QPR increased transparency on quality spending and will continue to gather detailed information on how States and Territories are spending their quality funds, as well as more specific data points to reflect the requirements in the CCDBG Act and the CCDF final rule.

In the QPR, Lead Agencies are asked about the State’s or Territory’s progress in meeting its goals as reported in the CCDF Plan, and provide available data on the results of those activities. Specifically, this report will: (1) Ensure accountability for the use of CCDF quality funds, including a set-aside for quality infant and toddler care that begins in FY 2017; (2) track progress toward meeting State- and Territory-set indicators and benchmarks for improvement of child care quality per what they described in their CCDF Plans; (3) summarize how the Lead Agency is building a progression of professional development for child care providers as envisioned in the CCDBG Act of 2014 and CCDF final rule; and (4) inform federal technical assistance efforts and decisions regarding strategic use of quality funds.

The Office of Child Care (OCC) has given thoughtful consideration to the comments received during the 60-day Public Comment Period and has revised the QPR to better align with the new program requirements made under the CCDBG Act of 2014 and the final rule. The revised document also contains additional guidance and clarification where appropriate in order to improve the quality of information that is being collected. *Note:* A correction was also made to the burden hours. This 30-day Public Comment Period provides an opportunity for the public to submit comments to the Office of Management and Budget (OMB).

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L’Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: infocollection@acf.hhs.gov.

Respondents: State and Territory CCDF Lead Agencies (56).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CCDF QPR	56	1	60.0	3,360

Estimated Total Annual Burden Hours: 3,360 hours.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. All requests should be identified by the title of the information collection. Email address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2017-20765 Filed 9-27-17; 8:45 am]

BILLING CODE 4184-43-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2017-N-0007]

Fee for Using a Rare Pediatric Disease Priority Review Voucher in Fiscal Year 2018

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the fee rate for using a rare pediatric disease priority review voucher for fiscal year (FY) 2018. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to determine and collect rare pediatric disease priority review user

fees for certain applications for review of human drug or biological products when those applications use a rare pediatric disease priority review voucher. These vouchers are awarded to the sponsors of rare pediatric disease product applications that meet all of the requirements of this program and that are submitted 90 days or more after July 9, 2012, upon FDA approval of such applications. The amount of the fee for using a rare pediatric disease priority review voucher is determined each FY, based on the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous FY and the average cost incurred in the review of an application that is not subject to priority review in the previous FY. This notice establishes the rare pediatric disease priority review fee rate for FY 2018 and outlines the payment procedures for such fees.

FOR FURTHER INFORMATION CONTACT:

Robert J. Marcarelli, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd., COLE-14202F, Silver Spring, MD 20993-0002, 301-796-7223.

SUPPLEMENTARY INFORMATION:

I. Background

Section 908 of FDASIA (Pub. L. 112-144) added section 529 to the FD&C Act (21 U.S.C. 360ff). In section 529 of the FD&C Act, Congress encouraged development of new human drugs and biological products for prevention and treatment of certain rare pediatric diseases by offering additional incentives for obtaining FDA approval of such products. Under section 529 of the FD&C Act, the sponsor of an eligible human drug application submitted 90 days or more after July 9, 2012, for a rare pediatric disease (as defined in section 529(a)(3)) shall receive a priority review voucher upon approval of the rare pediatric disease product application. The recipient of a rare pediatric disease priority review voucher may either use the voucher for a future human drug application submitted to FDA under section 505(b)(1) of the FD&C Act (21 U.S.C. 355(b)(1)) or section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), or transfer (including by sale) the voucher to another party. The

voucher may be transferred (including by sale) repeatedly until it ultimately is used for a human drug application submitted to FDA under section 505(b)(1) of the FD&C Act or section 351(a) of the Public Health Service Act. A priority review is a review conducted with a Prescription Drug User Fee Act (PDUFA) goal date of 6 months after the receipt or filing date, depending on the type of application. Information regarding PDUFA goals is available at <http://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm511438.pdf>.

The applicant that uses a rare pediatric disease priority review voucher is entitled to a priority review of its eligible human drug application, but must pay FDA a rare pediatric disease priority review user fee in addition to any user fee required by PDUFA for the application. Information regarding the rare pediatric disease priority review voucher program is available at: <http://www.fda.gov/Drugs/DevelopmentApprovalProcess/DevelopmentResources/ucm375479.htm>.

This notice establishes the rare pediatric disease priority review fee rate for FY 2018 at \$2,830,579 and outlines FDA's procedures for payment of rare pediatric disease priority review user fees. This rate is effective on October 1, 2017, and will remain in effect through September 30, 2018.

II. Rare Pediatric Priority Review User Fee for FY 2018

Under section 529(c)(2) of the FD&C Act, the amount of the rare pediatric disease priority review user fee is determined each fiscal year based on the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous fiscal year, and the average cost incurred by FDA in the review of a human drug application that is not subject to priority review in the previous fiscal year.

A priority review is a review conducted with a PDUFA goal date of 6 months after the receipt or filing date, depending on the type of application. Under the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of the applications granted

priority review status within this expedited timeframe. Normally, an application for a human drug or biological product will qualify for priority review if the product is intended to treat a serious condition and, if approved, would provide a significant improvement in safety or effectiveness. An application that does not receive a priority designation will receive a standard review. Under the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of standard applications within 10 months of the receipt or filing date depending on the type of application. A priority review involves a more intensive level of effort and a higher level of resources than a standard review.

FDA is setting a fee for FY 2018, which is to be based on standard cost data from the previous fiscal year, FY 2017. However, the FY 2017 submission cohort has not been closed out yet, thus the cost data for FY 2017 are not complete. The latest year for which FDA has complete cost data is FY 2016. Furthermore, because FDA has never tracked the cost of reviewing applications that get priority review as a separate cost subset, FDA estimated this cost based on other data that the Agency has tracked. FDA uses data that the Agency estimates and publishes on its Web site each year—standard costs for review. FDA does not publish a standard cost for “the review of a human drug application subject to priority review in the previous fiscal year.” However, we expect all such applications would contain clinical

data. The standard cost application categories with clinical data that FDA publishes each year are: (1) New drug applications (NDAs) for a new molecular entity (NME) with clinical data and (2) biologics license applications (BLAs).

The standard cost worksheets for FY 2016 show standard costs (rounded to the nearest hundred dollars) of \$5,929,100 for an NME NDA, and \$4,887,100 for a BLA. Based on these standard costs, the total cost to review the 49 applications in these two categories in FY 2016 (27 NME NDAs with clinical data and 22 BLAs) was \$267,601,900. (Note: These numbers exclude the President’s Emergency Plan for AIDS Relief NDAs; no investigational new drug (IND) review costs are included in this amount.) 23 of these applications (14 NDAs and 9 BLAs) received priority review, which would mean that the remaining 26 received standard reviews. Because a priority review compresses a review schedule that ordinarily takes 10 months into 6 months, FDA estimates that a multiplier of 1.67 (10 months divided by 6 months) should be applied to non-priority review costs in estimating the effort and cost of a priority review as compared to a standard review. This multiplier is consistent with published research on this subject which supports a priority review multiplier in the range of 1.48 to 2.35 (Ref. 1). Using FY 2016 figures, the costs of a priority and standard review are estimated using the following formula:

$(23 \alpha \times 1.67) + (26 \alpha) = \$267,601,900$ where “ α ” is the cost of a standard review and “ α times 1.67” is the cost of a priority review. Using this formula, the cost of a standard review for NME NDAs and BLAs is calculated to be \$4,154,664 (rounded to the nearest dollar) and the cost of a priority review for NME NDAs and BLAs is 1.67 times that amount, or \$6,938,289 (rounded to the nearest dollar). The difference between these two cost estimates, or \$2,783,625, represents the incremental cost of conducting a priority review rather than a standard review.

For the FY 2018 fee, FDA will need to adjust the FY 2016 incremental cost by the average amount by which FDA’s average costs increased in the 3 years prior to FY 2017, to adjust the FY 2016 amount for cost increases in FY 2017. That adjustment, published in the **Federal Register** on September 14, 2017 (82 FR 43244), setting the FY 2018 PDUFA fee, is 1.6868 percent for the most recent year, not compounded. Increasing the FY 2016 incremental priority review cost of \$2,783,625 by 1.6868 percent (or 0.016868) results in an estimated cost of \$2,830,579 (rounded to the nearest dollar). This is the rare pediatric disease priority review user fee amount for FY 2018 that must be submitted with a priority review voucher for a human drug application in FY 2018, in addition to any PDUFA fee that is required for such an application.

III. Fee Schedule for FY 2018

The fee rate for FY 2018 is set out in Table 1:

TABLE 1—RARE PEDIATRIC DISEASE PRIORITY REVIEW SCHEDULE FOR FY 2018

Fee category	Fee rate for FY 2018
Application submitted with a rare pediatric disease priority review voucher in addition to the normal PDUFA fee	\$2,830,579

IV. Implementation of Rare Pediatric Disease Priority Review User Fee

Under section 529(c)(4)(A) of the FD&C Act, the priority review user fee is due (i.e. the obligation to pay the fee is incurred) when a sponsor notifies FDA of its intent to use the voucher. Section 529(c)(4)(B) of the FD&C Act specifies that the application will be considered incomplete if the priority review user fee and all other applicable user fees are not paid in accordance with FDA payment procedures. In addition, section 529(c)(4)(C) specifies that FDA may not grant a waiver, exemption, reduction, or refund of any fees due and payable under this section of the FD&C Act. Beginning with FDA’s

appropriation for FY 2015, the annual appropriation language states specifically that “priority review user fees authorized by 21 U.S.C. 360n [i.e., section 524 of the FD&C Act] and 360ff [i.e., section 529 of the FD&C Act] shall be credited to this account, to remain available until expended.” (Pub. L. 113–235, Section 5, Division A, Title VI).

The rare pediatric disease priority review fee established in the new fee schedule must be paid for any application that is received on or after October 1, 2017. In order to comply with this requirement, the sponsor must notify FDA 90 days prior to submission of the human drug application that is the subject of a priority review voucher

of an intent to submit the human drug application, including the date on which the sponsor intends to submit the application.

Upon receipt of this notification, FDA will issue an invoice to the sponsor who has incurred a rare pediatric disease priority review voucher fee. The invoice will include instructions on how to pay the fee via wire transfer or check.

As noted in section II, if a sponsor uses a rare pediatric disease priority review voucher for a human drug application, the sponsor would incur the rare pediatric disease priority review voucher fee in addition to any PDUFA fee that is required for the application. The sponsor would need to follow

FDA's normal procedures for timely payment of the PDUFA fee for the human drug application.

Payment must be made in U.S. currency by electronic check, check, bank draft, wire transfer, credit card, or U.S. postal money order payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck). Secure electronic payments can be submitted using the User Fees Payment Portal at <https://userfees.fda.gov/pay> (Note: Only full payments are accepted. No partial payments can be made online). Once you search for your invoice, select "Pay Now" to be redirected to Pay.gov. Note that electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than \$25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

If paying with a paper check the invoice number should be included on the check, followed by the words "Rare Pediatric Disease Priority Review." All paper checks must be in U.S. currency from a U.S. bank made payable and mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197-9000.

If checks are sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314-418-4013. This telephone number is only for questions about courier delivery). The FDA post office box number (P.O. Box 979107) must be written on the check. If needed, FDA's tax identification number is 53-0196965.

If paying by wire transfer, please reference your invoice number when completing your transfer. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee it is required to add that amount to the payment to ensure that the invoice is paid in full. The account information is as follows: U.S. Dept. of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Number: 75060099, Routing Number: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., 14th Floor, Silver Spring, MD 20993-0002.

V. Reference

The following reference is on display in the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Ridley, D.B., H.G. Grabowski, and J.L. Moe, "Developing Drugs for Developing Countries," *Health Affairs*, vol. 25, no. 2, pp. 313-324, 2006.

Dated: September 22, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017-20798 Filed 9-27-17; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-N-1119]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 30, 2017.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202-395-7285, or emailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910-0037. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601

Landsdown St., North Bethesda, MD 20852, 301-796-7726, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

I. Background

Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers 21 CFR 108.25 and 108.35, and Parts 113 and 114

OMB Control Number 0910-0037—Extension

Section 402 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 342) deems a food to be adulterated, in part, if the food bears or contains any poisonous or deleterious substance that may render it injurious to health. Section 301(a) of the FD&C Act (21 U.S.C. 331(a)) prohibits the introduction or delivery for introduction into interstate commerce of adulterated food. Under section 404 of the FD&C Act (21 U.S.C. 344), our regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures, and to permit us to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum*. The spores of *C. botulinum* need to be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing procedures, which must include the use of adequate heat processes or other means of preservation.

To protect the public health, our regulations require that each firm that manufactures, processes, or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with us using Form FDA 2541 (§§ 108.25(c)(1) and 108.35(c)(2) (21 CFR 108.25(c)(1) and 108.35(c)(2)). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Forms FDA 2541d, FDA 2541e,

and FDA 2541f for all methods except aseptic processing, or Form FDA 2541g for aseptic processing of low-acid foods in hermetically sealed containers (§§ 108.25(c)(2) and 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product, and operating processes and procedures must be posted near the processing equipment or made available to the operator (21 CFR 113.87(a)).

Regulations in parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms also must document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c)); to report any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce (§§ 108.25(d) and 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§ 113.60(c)) (thermally processed foods) and § 114.80(b) (acidified foods).

The records of processing information are periodically reviewed during factory inspections by FDA to verify fulfillment of the requirements in parts 113 or 114. Scheduled thermal processes are

examined and reviewed to determine their adequacy to protect public health. In the event of a public health emergency, records are used to pinpoint potentially hazardous foods rapidly and thus limit recall activity to affected lots.

As described in our regulations, processors may obtain the paper versions of Forms FDA 2541, FDA 2541d, FDA 2541e, FDA 2541f, and FDA 2541g by contacting us at a particular address or by visiting <https://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/ucm2007436.htm>. Processors mail completed paper forms to us. However, processors who are subject to § 108.25, § 108.35, or both, have an option to submit Forms FDA 2541, FDA 2541d, FDA 2541e, FDA 2541f, and FDA 2541g electronically (Ref. 1).

Although we encourage commercial processors to use the electronic submission system for plant registration and process filing, we will continue to make paper-based forms available. To standardize the burden associated with process filing, regardless of whether the process filing is submitted electronically or using a paper form, we are offering the public the opportunity to use four forms, each of which pertains to a specific type of commercial processing and is available both on the electronic submission system and as a paper-based form. The electronic submission system and paper-based form “mirror” each other to the extent practicable. The four process filing forms are as follows:

- Form FDA 2541d (Food Process Filing for Low-Acid Retorted Method) (Ref. 2);

- Form FDA 2541e (Food Process Filing for Acidified Method) (Ref. 3);
- Form FDA 2541f (Food Process Filing for Water Activity/Formulation Control Method) (Ref. 4); and
- Form FDA 2541g (Food Process Filing for Low-Acid Aseptic Systems) (Ref. 5).

At this time, the paper-based versions of the four forms and their instructions are all available for review as references to this document (Refs. 2 through 5) or at <https://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/ucm2007436.htm>.

Description of Respondents: The respondents to this information collection are commercial processors and packers of acidified foods and thermally processed low-acid foods in hermetically sealed containers.

In the **Federal Register** of June 20, 2017 (82 FR 28069), FDA published a 60-day notice requesting public comment on the proposed collection of information. While no comments were submitted to the docket, it was noted that the notice included an inadvertent reference to outdated forms. We regret this oversight and have made appropriate corrections in this notice. The forms developed in support of the information collection are intended to minimize burden on respondents while maximizing utility for FDA, and thus we are continuously open to suggestions on how they might be improved.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR section	FDA form number	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (minutes)	Total hours
§§ 108.25(c)(1) and 108.35(c)(2); Food canning establishment registration	2541	645	1	645	0.17 (10)	110
§ 108.25(c)(2); Food process filing for acidified method	2541e	726	11	7,986	0.333 (20)	2,659
§ 108.35(c)(2); Food process filing for low-acid retorted method	2541d	336	12	4,032	0.333 (20)	1,343
§ 108.35(c)(2); Food process filing for water activity/formulation control method	2541f	37	6	222	0.333 (20)	74
§ 108.35(c)(2); Food process filing for low-acid aseptic systems	2541g	42	22	924	0.75 (45)	693

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹—Continued

21 CFR section	FDA form number	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (minutes)	Total hours
§§ 108.25(d) and 108.35(d) and (e); Report of any instance of potential health endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce	N/A	1	1	1	4	4
Total					4,883	

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases its estimate of the number of respondents in table 1 on registrations, process filings, and reports received over the past 3 years. The hours per response reporting estimates are based on our experience with similar programs and information

received from industry. The reporting burden for §§ 108.25(d) and 108.35(d) and (e) is minimal because notification of spoilage, process deviation, or contamination of product in distribution occurs less than once a year. Most firms discover these problems before the

product is distributed, and are therefore not required to report the occurrence. We estimate that we will receive one report annually under §§ 108.25(d) and 108.35(d) and (e). The report is expected to take 4 hours per response, for a total of 4 hours.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹

21 CFR part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
108, 113, and 114	10,392	1	10,392	250	2,598,000

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases its estimate of 10,392 recordkeepers in table 2 on its records of the number of registered firms, excluding firms that were inactive or out of business, yet still registered. To avoid double-counting, we have not included estimates for §§ 108.25(g), 108.35(c)(2)(ii), and 108.35(h) because they merely cross-reference recordkeeping requirements contained in parts 113 and 114 and have been accounted for in the recordkeeping burden estimate. We estimate that 10,392 firms will expend approximately 250 hours per year to fully satisfy the recordkeeping requirements in parts 108, 113 and 114, for a total of 2,598,000 hours.

Finally, our regulations require that processors mark thermally processed low-acid foods in hermetically sealed containers (§ 113.60(c)) and acidified foods (§ 114.80(b)) with an identifying code to permit lots to be traced after distribution. We seek OMB approval of the third-party disclosure requirements in §§ 113.60(c) and 114.80(b). However, we have not included a separate table to report the estimated burden of these regulations. No burden has been estimated for the third-party disclosure requirements in §§ 113.60(c) and 114.80(b) because the coding process is done as a usual and customary part of normal business activities. Coding is a

business practice in foods for liability purposes, inventory control, and process control in the event of a problem. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities. The burden for this information collection has not changed since the last OMB approval.

II. References

The following references are on display in the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 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 2016. “Guidance for Industry: Submitting Form FDA 2541 (Food Canning Establishment Registration) and Forms FDA 2541d, FDA 2541e, FDA

- 2541f, and FDA 2541g (Food Process Filing Forms) to FDA in Electronic or Paper Format.” Available at <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/AcidifiedLACF/ucm309376.htm>.
2. Form FDA 2541d. Food Process Filing for Low-Acid Retorted Method. Available at <https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM465591.pdf>.
3. Form FDA 2541e. Food Process Filing for Acidified Method. Available at <https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM465593.pdf>.
4. Form FDA 2541f. Food Process Filing for Water Activity/Formulation Control Method. Available at <https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM465595.pdf>.
5. Form FDA 2541g. Food Process Filing for Low-Acid Aseptic Systems. Available at <https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM465598.pdf>.

Dated: September 22, 2017.

Anna K. Abram,
Deputy Commissioner for Policy, Planning,
Legislation, and Analysis.

[FR Doc. 2017–20791 Filed 9–27–17; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2017-N-0007]

Fee for Using a Tropical Disease Priority Review Voucher in Fiscal Year 2018

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the fee rates for using a tropical disease priority review voucher for fiscal year (FY) 2018. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Food and Drug Administration Amendments Act of 2007 (FDAAA), authorizes FDA to determine and collect priority review user fees for certain applications for approval of drug or biological products when those applications use a tropical disease priority review voucher awarded by the Secretary of Health and Human Services. These vouchers are awarded to the sponsors of certain tropical disease product applications, submitted after September 27, 2007, upon FDA approval of such applications. The amount of the fee submitted to FDA with applications using a tropical disease priority review voucher is determined each fiscal year based on the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous fiscal year, and the average cost incurred in the review of an application that is not subject to priority review in the previous fiscal year. This notice establishes the tropical disease priority review fee rate for FY 2018.

FOR FURTHER INFORMATION CONTACT: Robert J. Marcarelli, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd., COLE-14202F, Silver Spring, MD 20993-0002, 301-796-7223.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1102 of FDAAA (Pub. L. 110-85) added section 524 to the FD&C Act (21 U.S.C. 360n). In section 524, Congress encouraged development of new drug and biological products for prevention and treatment of certain tropical diseases by offering additional incentives for obtaining FDA approval of such products. Under section 524, the sponsor of an eligible human drug application submitted after September 27, 2007, for a tropical disease (as

defined in section 524(a)(3) of the FD&C Act), shall receive a priority review voucher upon approval of the tropical disease product application. The recipient of a tropical disease priority review voucher may either use the voucher with a future submission to FDA under section 505(b)(1) of the FD&C Act (21 U.S.C. 355(b)(1)) or section 351 of the Public Health Service Act (42 U.S.C. 262), or transfer (including by sale) the voucher to another party. The voucher may be transferred (including by sale) repeatedly until it ultimately is used for a human drug application submitted to FDA under section 505(b)(1) of the FD&C Act or section 351(a) of the Public Health Service Act. A priority review is a review conducted with a Prescription Drug User Fee Act (PDUFA) goal date of 6 months after the receipt or filing date, depending upon the type of application. Information regarding the PDUFA goals is available at: <http://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm511438.pdf>.

The applicant that uses a priority review voucher is entitled to a priority review but must pay FDA a priority review user fee in addition to any other fee required by PDUFA. FDA published guidance on its Web site about how this tropical disease priority review voucher program operates (available at: <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm080599.pdf>).

This notice establishes the tropical disease priority review fee rate for FY 2018 as \$2,830,579 and outlines FDA's process for implementing the collection of the priority review user fees. This rate is effective on October 1, 2017, and will remain in effect through September 30, 2018, for applications submitted with a tropical disease priority review voucher. The payment of this priority review user fee is required in addition to the payment of any other fee that would normally apply to such an application under PDUFA before FDA will consider the application complete and acceptable for filing.

II. Tropical Disease Priority Review User Fee for FY 2018

FDA interprets section 524(c)(2) of the FD&C Act as requiring that FDA determine the amount of the tropical disease priority review user fee each fiscal year based on the difference between the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous fiscal year, and the average cost incurred by FDA in the review of

a human drug application that is not subject to priority review in the previous fiscal year.

A priority review is a review conducted with a PDUFA goal date of 6 months after the receipt or filing date, depending on the type of application. Under the PDUFA goals letter, FDA has committed to reviewing and acting on 90 percent of the applications granted priority review status within this expedited timeframe. Normally, an application for a human drug or biological product will qualify for priority review if the product is intended to treat a serious condition and, if approved, would provide a significant improvement in safety or effectiveness. An application that does not receive a priority designation will receive a standard review. Under the PDUFA goals letter, FDA committed to reviewing and acting on 90 percent of standard applications within 10 months of the receipt or filing date, depending on the type of application. A priority review involves a more intensive level of effort and a higher level of resources than a standard review.

FDA is setting fees for FY 2018, and the previous fiscal year is FY 2017. However, the FY 2017 submission cohort has not been closed out yet, and the cost data for FY 2017 are not complete. The latest year for which FDA has complete cost data is FY 2016. Furthermore, because FDA has never tracked the cost of reviewing applications that get priority review as a separate cost subset, FDA estimated this cost based on other data that the Agency has tracked. FDA uses data that the Agency estimates and publishes on its Web site each year—standard costs for review. FDA does not publish a standard cost for “the review of a human drug application subject to priority review in the previous fiscal year.” However, we expect all such applications would contain clinical data. The standard cost application categories with clinical data that FDA does publish each year are: (1) New drug applications (NDAs) for a new molecular entity (NME) with clinical data and (2) biologics license applications (BLAs).

The worksheets for standard costs for FY 2016, show a standard cost (rounded to the nearest hundred dollars) of \$5,929,100 for a NME NDA and \$4,887,100 for a BLA. Based on these standard costs, the total cost to review the 49 applications in these two categories in FY 2016 (27 NME NDAs with clinical data and 22 BLAs) was \$267,601,900. (**Note:** These numbers exclude the President's Emergency Plan for AIDS Relief NDAs; no

investigational new drug review costs are included in this amount.) Twenty-three of these applications (14 NDAs and 9 BLAs) received priority review, which would mean that the remaining 26 received standard reviews. Because a priority review compresses a review that ordinarily takes 10 months into 6 months, FDA estimates that a multiplier of 1.67 (10 months divided by 6 months) should be applied to non-priority review costs in estimating the effort and cost of a priority review as compared to a standard review. This multiplier is consistent with published research on this subject which supports a priority review multiplier in the range of 1.48 to 2.35 (Ref. 1). Using FY 2016 figures, the costs of a priority and standard review are estimated using the following formula:

$(23 \alpha \times 1.67) + (26 \alpha) = \$267,601,900$ where “ α ” is the cost of a standard review and “ α times 1.67” is the cost of a priority review. Using this formula, the cost of a standard review for NME NDAs and BLAs is calculated to be \$4,154,664 (rounded to the nearest dollar) and the cost of a priority review for NME NDAs and BLAs is 1.67 times that amount, or \$6,938,289 (rounded to the nearest dollar). The difference between these two cost estimates, or \$2,783,625, represents the incremental cost of conducting a priority review rather than a standard review.

For the FY 2018 fee, FDA will need to adjust the FY 2016 incremental cost by the average amount by which FDA’s average costs increased in the 3 years prior to FY 2017, to adjust the FY 2016 amount for cost increases in FY 2017.

That adjustment, published in the **Federal Register** on July 28, 2016 (see 81 FR 49674 at 49676), setting FY 2018 PDUFA fees, is 1.6868 percent for the most recent year, not compounded. Increasing the FY 2016 incremental priority review cost of \$2,783,625 by 1.6868 percent (or 0.016868) results in an estimated cost of \$2,830,579 (rounded to the nearest dollar). This is the tropical disease priority review user fee amount for FY 2018 that must be submitted with a priority review voucher for a human drug application in FY 2018, in addition to any PDUFA fee that is required for such an application.

III. Fee Schedule for FY 2018

The fee rate for FY 2018 is set out in table 1:

TABLE 1—TROPICAL DISEASE PRIORITY REVIEW SCHEDULE FOR FY 2018

Fee category	Fee rate for FY 2018
Application submitted with a tropical disease priority review voucher in addition to the normal PDUFA fee	\$2,830,579

IV. Implementation of Tropical Disease Priority Review User Fee

Under section 524(c)(4)(A) of the FD&C Act, the priority review user fee is due upon submission of a human drug application for which the priority review voucher is used. Section 524(c)(4)(B) of the FD&C Act specifies that the application will be considered incomplete if the priority review user fee and all other applicable user fees are not paid in accordance with FDA payment procedures. In addition, FDA may not grant a waiver, exemption, reduction, or refund of any fees due and payable under section 524 of the FD&C Act (see section 524(c)(4)(C)) and FDA may not collect priority review voucher fees “except to the extent provided in advance in appropriation Acts.” (Section 524(c)(5)(B) of the FD&C Act.) Beginning with FDA’s appropriation for FY 2009, the annual appropriation language states specifically that “priority review user fees authorized by 21 U.S.C. 360n [i.e., section 524 of the FD&C Act] may be credited to this account, to remain available until expended.” (Pub. L. 111–8, Section 5, Division A, Title VI).

The tropical disease priority review fee established in the new fee schedule must be paid for any application that is received on or after October 1, 2017, and submitted with a priority review voucher. This fee must be paid in addition to any other fee due under PDUFA. Payment should be made in

U.S. currency by electronic check, check, bank draft, wire transfer, credit card, or U.S. postal money order payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck). Secure electronic payments can be submitted using the User Fees Payment Portal at <https://userfees.fda.gov/pay>. (NOTE: Only full payments are accepted. No partial payments can be made online.) Once you search for your invoice, select “Pay Now” to be redirected to [Pay.gov](https://pay.gov). Note that electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than \$25,000. If the balance exceeds this amount, only the ACH option is available. Payments should be made using U.S. bank accounts as well as U.S. credit cards.

FDA has partnered with the U.S. Department of the Treasury to use [Pay.gov](https://pay.gov), a web-based payment application, for online electronic payment. The [Pay.gov](https://pay.gov) feature is available on the FDA Web site after the user fee ID number is generated.

If paying with a paper check the user fee identification (ID) number should be included on the check, followed by the words “Tropical Disease Priority Review.” All paper checks should be in U.S. currency from a U.S. bank made payable and mailed to: Food and Drug

Administration, P.O. Box 979107, St. Louis, MO 63197–9000.

If checks are sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (NOTE: This U.S. Bank address is for courier delivery only.) If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4013. (This telephone number is only for questions about courier delivery). The FDA post office box number (P.O. Box 979107) must be written on the check. If needed, FDA’s tax identification number is 53–0196965.

If paying by wire transfer, please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. The account information is as follows: U.S. Dept. of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Number: 75060099, Routing Number: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., 14th Floor, Silver Spring, MD 20993–0002.

V. Reference

The following reference is on display in the Dockets Management Staff (HFA–305), Food and Drug Administration,

5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

- Ridley, D.B., H.G. Grabowski, and J.L. Moe, "Developing Drugs for Developing Countries," *Health Affairs*, vol. 25, no. 2, pp. 313–324, 2006.

Dated: September 22, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–20799 Filed 9–27–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–0001]

Request for Nominations on Public Advisory Panels of the Medical Devices Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of nonvoting industry representatives to serve on certain panels of the Medical Devices Advisory Committee (MDAC or Committee) in the Center for Devices and Radiological Health (CDRH) notify FDA in writing. FDA is also requesting nominations for nonvoting industry representatives to serve on certain device panels of the MDAC in the CDRH. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current and

upcoming vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to the FDA by October 30, 2017 (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by October 30, 2017.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nomination should be sent to Margaret Ames (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives should be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal: <https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm> or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA’s Web site at <https://www.fda.gov/AdvisoryCommittees/default.htm>.

FOR FURTHER INFORMATION CONTACT: Margaret Ames, Division of Workforce Management, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5264, Silver Spring, MD 20993, 301–796–5960, Fax: 301–847–8505, email: margaret.ames@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: The Agency is requesting nominations for nonvoting industry representatives to

the panels listed in the table in this document.

I. Medical Devices Advisory Committee

The Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in a number of activities to fulfill the functions the Federal Food, Drug, and Cosmetic Act (the FD&C Act) envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the FD&C Act; advises on the necessity to ban a device; and responds to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices. The Committee also provides recommendations to the Commissioner or designee on complexity categorization of in vitro diagnostics under the Clinical Laboratory Improvement Amendments of 1988.

Panels	Function
<i>Circulatory System Devices Panel</i>	Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational devices for use in the circulatory and vascular systems and makes appropriate recommendations to the Commissioner of Food and Drugs.
<i>Clinical Chemistry and Clinical Toxicology Devices Panel.</i>	Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational in vitro devices for use in clinical laboratory medicine including clinical toxicology, clinical chemistry, endocrinology, and oncology and makes appropriate recommendations to the Commissioner of Food and Drugs.
<i>Gastroenterology and Urology Devices Panel.</i>	Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational gastroenterology, urology, and nephrology devices and makes appropriate recommendations to the Commissioner of Food and Drugs.
<i>General Hospital and Personal Use Devices Panel.</i>	Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational general hospital, infection control, and personal use devices and makes appropriate recommendations to the Commissioner of Food and Drugs.
<i>Obstetrics and Gynecology Devices Panel.</i>	Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational devices for use in obstetrics and gynecology and makes appropriate recommendations to the Commissioner of Food and Drugs.

Panels	Function
<i>Ophthalmic Devices Panel</i>	Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational devices for use in the eye and makes appropriate recommendations to the Commissioner of Food and Drugs.

II. Qualifications

Persons nominated for the device panels should be full-time employees of firms that manufacture products that would come before the panel, or consulting firms that represent manufacturers, or have similar appropriate ties to industry.

III. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for a particular device panel. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

IV. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current curriculum vitae, and the name of the panel of interest should be sent to the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the particular device panels listed in the table. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process).

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with

and without disabilities on its advisory committees and, therefore encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: September 22, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017-20778 Filed 9-27-17; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS-0990-0330]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before November 27, 2017.

ADDRESSES: Submit your comments to Sherrette.Funn@hhs.gov or by calling (202)795-7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990-0330-60D and project title for reference, to Sherrette.funn@hhs.gov, the Reports Clearance Officer Sherrette Funn, call 202-795-7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (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.

Title: Appellant Climate Survey, Revision.

Abstract: The Office of Medicare Hearings and Appeals (OMHA) requests revision to a previously approved information collection request from the Office of Management and Budget (OMB). The annual OMHA Appellant Climate Survey is a survey of Medicare beneficiaries, providers, suppliers, or their representatives who participated in a hearing before an Administrative Law Judge (ALJ) from OMHA. Appellants dissatisfied with the outcome of their Level 2 Medicare appeal may request a hearing before an OMHA ALJ. The Appellant Climate Survey will be used to measure appellant satisfaction with their OMHA appeals experience, as opposed to their satisfaction with a specific ruling. OMHA was established by the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (Pub. L. 108-173) and became operational on July 1, 2005. The MMA legislation and implementing regulations issued on March 8, 2007 instituted a number of changes in the appeals process. The MMA legislation also directed HHS to consider the feasibility of conducting hearings using telephone or video-teleconference (VTC) technologies. In carrying out this mandate, OMHA makes use of both teleconferencing and VTC to provide appellants with a vast nationwide network of access points for hearings close to their homes. The first 3-year administration cycle of the OMHA survey began in fiscal year (FY) 2008, a second 3-year cycle began in FY2011, and third 3-year cycle began in FY2014. The survey will continue to be conducted annually over a 3-year period with the next data collection cycle beginning in FY2018. Data collection instruments and recruitment materials will be offered in English and Spanish. Total burden for survey respondents is 100.00 hours each year.

Affected Public: Survey respondents will consist of Medicare beneficiaries and non-beneficiaries (*i.e.*, providers, suppliers), who participated in a hearing before an OMHA ALJ. OMHA will draw a representative, non-redundant sample of appellants whose

cases have been closed in the last 6 months.

Table 1. Estimates of Respondent Burden

Respondent Type	Form Name	Number of Respondents	Number of Responses Per Respondent	Burden Per Response (Hours)	Total Burden (Hours)
Beneficiaries	Appellant Climate Survey	200	1	15/60	50.00
Non-Beneficiaries		200	1	15/60	50.00
Total		400	1	15/60	100.00

Terry S. Clark,

Office of the Secretary, Asst. Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2017-20738 Filed 9-27-17; 8:45 am]

BILLING CODE 4150-46-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary’s Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces the next federal advisory committee meeting regarding the development of national health promotion and disease prevention objectives for 2030. This meeting will be held online via webinar and is open to the public. The Committee will discuss the nation’s health promotion and disease prevention objectives and will provide recommendations to improve health status and reduce health risks for the nation by the year 2030. The Committee will advise the Secretary on the Healthy People 2030 mission, vision, framework, and organizational structure. The Committee will provide advice regarding criteria for identifying a more focused set of measurable, nationally representative objectives. The Committee’s advice must assist the Secretary in reducing the number of objectives while ensuring that the selection criteria identifies the most critical public health issues that are high-impact priorities supported by current national data.

DATES: The Committee will meet on October 16, 2017, from 1:00 p.m. to 3:00 p.m. Eastern Time (ET).

ADDRESSES: The meeting will be held online via webinar. To register to attend the meeting, please visit the Healthy People Web site at <http://www.healthypeople.gov>.

FOR FURTHER INFORMATION CONTACT: Emmeline Ochiai, Designated Federal Official, Secretary’s Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Room LL-100, Rockville, MD 20852, (240) 453-8280 (telephone), (240) 453-8281 (fax). Additional information is available on the Healthy People Web site at <http://www.healthypeople.gov>.

SUPPLEMENTARY INFORMATION: The names and biographies of the Committee members are available at <https://www.healthypeople.gov/2020/about/history-development/healthy-people-2030-advisory-committee>.

Purpose of Meeting: Through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with new knowledge of current data, trends, and innovations, to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives that meet a broad range of health needs, encourage collaboration across sectors, guide individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities. Healthy People 2030 health objectives will reflect assessments of major risks to health and wellness, changing public health

priorities, and emerging technologies related to our nation’s health preparedness and prevention.

Public Participation at Meeting: Members of the public are invited to join the online Committee meeting. There will be no opportunity for oral public comments during this online Committee meeting. However, written comments are welcome throughout the entire development process of the national health promotion and disease prevention objectives for 2030 and may be emailed to HP2030@hhs.gov.

To join the Committee meeting, individuals must pre-register at the Healthy People Web site at <http://www.healthypeople.gov>. Participation in the meeting is limited. Registrations will be accepted until maximum webinar capacity is reached and must be completed by 9:00 a.m. ET on October 13, 2017. A waiting list will be maintained should registrations exceed capacity and those individuals will be contacted as additional space for the meeting becomes available. Registration questions may be directed to: Kate Fromknecht at fromknecht-kate@norc.org or (301) 634-9384.

Authority: 42 U.S.C. 217a. The Secretary’s Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92-463, as amended (5 U.S.C., App.) which sets forth standards for the formation and use of federal advisory committees.

Dated: September 22, 2017.

Don Wright,

Deputy Assistant Secretary for Health, (Disease Prevention and Health Promotion).

[FR Doc. 2017-20781 Filed 9-27-17; 8:45 am]

BILLING CODE 4150-32-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Diabetes Mellitus Interagency Coordinating Committee Meeting

SUMMARY: The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on October 25, 2017. The subject of the meeting will be "Enhancing Opportunities in Addressing Obesity and Type 2 Diabetes Disparities." The meeting is open to the public.

DATES: The meeting will be held on October 25, 2017; from 2:30 p.m. to 4:00 p.m. Individuals wanting to present oral comments must notify the contact person at least 10 days before the meeting date.

ADDRESSES: The meeting will be held in NIH campus, Building 31, Conference Room 6C6, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, see the DMICC Web site, www.diabetescommittee.gov, or contact Dr. B. Tibor Roberts, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 31 Center Drive, Building 31A, Room 9A19, MSC 2560, Bethesda, MD 20892-2560, telephone: 301-496-6623; FAX: 301-480-6741; email: dmicc@mail.nih.gov.

SUPPLEMENTARY INFORMATION: The DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The October 25, 2017 DMICC meeting will focus on Enhancing Opportunities in Addressing Obesity and Type 2 Diabetes Disparities.

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief

description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future DMICC meetings should register for the listserv available on the DMICC Web site, www.diabetescommittee.gov.

Dated: September 22, 2017.

B. Tibor Roberts,

Executive Secretary, DMICC, Office of Scientific Program and Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2017-20734 Filed 9-27-17; 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; Member Conflict: Chemosensory Neuroscience.

Date: October 10, 2017.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408-9664, bishopj@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Respiratory Integrative Biology and Translational Research Study Section.

Date: October 17-18, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, 301-451-8754, nussb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics on Diseases of Metabolism.

Date: October 18, 2017.

Time: 1:00 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, (Virtual Meeting).

Contact Person: Liliana Norma Berti-Mattera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 4215, Bethesda, MD 20892, 301-827-7609, liliana.ber-ti-mattera@nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Intercellular Interactions Study Section.

Date: October 19-20, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Wallace Ip, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, 301-435-1191, ipws@mail.nih.gov.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Myocardial Ischemia and Metabolism Study Section.

Date: October 19-20, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Contact Person: Kimm Hamann, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, 301-435-5575, hamannkj@csr.nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.

Date: October 23–24, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301-357-9112, smirnova@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular and Cellular Hematology.

Date: October 23, 2017.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Katherine M Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301-435-0912, Katherine_Malinda@csr.nih.gov.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.

Date: October 24–25, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Knecht, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435-1046, knechtm@csr.nih.gov.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Acute Neural Injury and Epilepsy Study Section.

Date: October 24–25, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237-9838, bhagavas@csr.nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Learning and Memory Study Section.

Date: October 24, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Contact Person: Nicholas Gaiano, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892-7844, 301-435-1033, gaianonr@csr.nih.gov.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular, Molecular and Integrative Reproduction Study Section.

Date: October 24–25, 2017.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301-435-0229, hunnicuttgr@csr.nih.gov.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer, Heart, and Sleep Epidemiology B Study Section.

Date: October 24–25, 2017.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Contact Person: Gniesha Yvonne Dinwiddie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20892, dinwiddiegy@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 22, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017-20763 Filed 9-27-17; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP07000.L14400000.FR0000 17X]

Notice of Realty Action: Proposed Non-Competitive Lease of Public Land in Johnson County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Buffalo Field Office, proposes to lease a parcel of

public land totaling 0.87 acres in Johnson County, Wyoming, for residential purposes. The subject parcel was inadvertently developed by the adjacent landowner (proposed lessee) as a residence without authorization. The area has a long history of occupancy and the proposed lease would provide the BLM with a reasonable option to resolve the continued unauthorized use of the affected public land. The BLM proposes to lease the lands for not less than the fair market value to N. Pearl Ross. The BLM Buffalo Resource Management Plan, dated September 22, 2015, does not exclude the subject parcel from the authorized officer's discretion to consider lease proposals in the subject area.

DATES: Written comments may be submitted to the address below. The BLM must receive your comments on or before November 13, 2017.

ADDRESSES: Send written comments concerning the proposed lease to the Field Manager, BLM, Buffalo Field Office, 1425 Fort Street, Buffalo, Wyoming 82834.

FOR FURTHER INFORMATION CONTACT: Claire Oliverius, Realty Specialist, at the address above, or by telephone at 307-684-1178, or by email at doliveri@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 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 BLM has determined that the parcel of land described below is suitable for consideration as a residential lease under Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) (FLPMA) and the implementing regulations at 43 CFR 2920.

A parcel of land situated in lot 3, section 30, Township 44 North, Range 81 West, Sixth Principal Meridian, Wyoming, more particularly described as follows:

Beginning at the center-west 1/16 section corner of said section 30, monumented with a BLM stainless steel post marked for said corner point;

Thence, S. 89°32' W., along the east and west center line of said section 30, a distance of 57 feet to an existing fence;

Thence, S. 12°57' W., along said fence, a distance of 84.8 feet to a point in said fence;

Thence, N. 23°29' W., a distance of 12.4 feet to a point;

Thence, S. 66°31' W., a distance of 5.0 feet to a point;

Thence, S. 23°29' E., a distance of 19 feet to the said fence;

Thence, S. 12°57' W., along said fence, a distance of 221 feet to intersection with an existing fence;

Thence, S. 48°20' E., along said intersecting fence, a distance of 126 feet to a corner in said fence;

Thence, S. 23°11' W., along said fence, a distance of 38 feet to a corner in said fence;

Thence, S. 37°00' E., along said fence, a distance of 81 feet to the north and south center line of the SW1/4 of said section 30;

Thence, North, along said north and south center line, a distance of 489 feet to the *Point of Beginning*; containing approximately 0.87 acres of land.

Basis of Bearing: True Meridian, determined from GPS/GNSS survey.

Based on past use of the subject parcel for a residence owned by William D. and Bonnie S. Ross, and currently occupied by N. Pearl Ross, it is the authorized officer's decision to offer the proposed residential lease with appropriate terms and conditions to N. Pearl Ross on a non-competitive basis because competitive bidding would represent an unfair competitive and economic disadvantage to Ms. Ross. As noted above, the use of this parcel constitutes an inadvertent trespass that was discovered by the BLM in 2013. The Ross family has since worked with the BLM to settle the trespass and the proposed lessee will apply for a residential lease.

Subsequent to the BLM's receipt of an application for leasing by N. Pearl Ross that complies with all applicable requirements set forth at 43 CFR 2920.5, processing of the proposed lease will take place in accordance with 43 CFR 2920.6, and other applicable regulations. Information and documentation regarding processing of the lease application is available as described in **ADDRESSES**, above, and reference should be made to the National Environmental Policy Act (NEPA) analysis, to be conducted under Environmental Assessment DOI-BLM-WY-P070-2016-0033-EA. The BLM will not make a final decision on the lease until all required analyses are completed. If authorized, the lease would be subject to provisions of the FLPMA, all applicable regulations of the Secretary of the Interior, including, but not limited to, 43 CFR part 2920, and to valid existing rights.

Public comments regarding the proposed lease may be submitted in writing—see **ADDRESSES** above—on or before November 13, 2017.

Comments received in electronic form, such as email or fax, will be considered. Any adverse comments regarding the proposed lease will be reviewed by the BLM Wyoming State Director or another authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

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.

Authority: 43 CFR 2920.4.

Buddy W. Green,

BLM Wyoming Acting Associate State Director.

[FR Doc. 2017-20793 Filed 9-27-17; 8:45 am]

BILLING CODE 4310-22-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-17-044]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 4, 2017 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings*: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731-TA-683 (Fourth Review) (Fresh Garlic from China). The Commission is currently scheduled to complete and file its determination and views of the Commission by October 19, 2017.

5. *Outstanding action jackets*: None. In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: September 26, 2017.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2017-20944 Filed 9-26-17; 4:15 pm]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-17-046]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 6, 2017 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings*: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701-TA-587 and 731-TA-1385-1386 (Preliminary) (Titanium Sponge from Japan and Kazakhstan). The Commission is currently scheduled to complete and file its determinations on October 10, 2017; views of the Commission are currently scheduled to be completed and filed on October 17, 2017.

5. *Outstanding action jackets*: None. In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: September 26, 2017.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2017-20946 Filed 9-26-17; 4:15 pm]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-17-045]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 5, 2017 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings*: None.
 2. Minutes.
 3. Ratification List.
 4. Vote in Inv. No. TA-201-76 (Injury) (Large Residential Washers).
 5. *Outstanding action jackets*: None.
- In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: September 26, 2017.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2017-20945 Filed 9-26-17; 4:15 pm]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1125-0010]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Notice of Appeal to the Board of Immigration Appeals From a Decision of a DHS Officer

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 27, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jean King, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305-0470.

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 Bureau of Justice Statistics, 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:* Revision and extension of a currently approved collection.
2. *The Title of the Form/Collection:* Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer.
3. *The agency form number:* EOIR-29 (OMB 1125-0010).
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: A party who appeals a decision of a DHS Officer to the Board of Immigration Appeals (Board).
Other: None.
Abstract: A party affected by a decision of a DHS Officer may appeal that decision to the Board, provided that the Board has jurisdiction pursuant to 8 CFR 1003.1(b). The party must complete the Form EOIR-29 and submit it to the DHS office having administrative control over the record of proceeding in order to exercise its regulatory right to appeal.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5501 respondents complete the form annually with an average of 30 minutes per response for completion.
6. *An estimate of the total public burden (in hours) associated with the collection:* 2,750.5 annual burden hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: September 25, 2017.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017-20812 Filed 9-27-17; 8:45 am]

BILLING CODE 4410-30-P

DEPARTMENT OF JUSTICE

[OMB Number 1110-0051]

Agency Information Collection Activities; Proposed eCollection Activities; Proposed eComments Requested Revision of a Currently Approved Collection; Final Disposition Report (R-84), With Supplemental Questions R-84(a), R-84(b), R-84(c), R-84(d), R-84(e), R-84(f), R-84(g), R-84(h), R-84(i), and R-84(j)

AGENCY: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 day until October 30, 2017.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C-2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306 (facsimile: 304-625-5093). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted via email to OIRA_submission@omb.eop.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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Final Disposition Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Agency form number: R-84, with supplemental questions R-84(a), R-84(b), R-84(c), R-84(d), R-84(e), R-84(f), R-84(g), R-84(h), R-84(i), and R-84(j).

Sponsoring component: Department of Justice, Criminal Justice Information Services Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal and tribal law enforcement agencies. This collection is needed to report completion of an arrest event. Acceptable data is stored as part of the Next Generation Identification (NGI) system of the FBI.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 330,000 respondents will complete each form within approximately 5 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 27,500 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department

Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Dated: September 25, 2017.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2017-20813 Filed 9-27-17; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1125-0010]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Notice of Appeal to the Board of Immigration Appeals From a Decision of a DHS Officer

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 27, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jeff Rosenblum, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 20530; telephone: (703) 305-0470. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to OIRA_submissions@omb.eop.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 Bureau of Justice Statistics, 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:* Revision and extension of a currently approved collection.

2. *The Title of the Form/Collection:* Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer.

3. *The agency form number:* EOIR-29 (OMB 1125-0010).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: A party who appeals a decision of a DHS Officer to the Board of Immigration Appeals (Board).

Other: None.

Abstract: A party affected by a decision of a DHS Officer may appeal that decision to the Board, provided that the Board has jurisdiction pursuant to 8 CFR 1003.1(b). The party must complete the Form EOIR-29 and submit it to the DHS office having administrative control over the record of proceeding in order to exercise its regulatory right to appeal.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5501 respondents complete the form annually with an average of 30 minutes per response for completion.

6. *An estimate of the total public burden (in hours) associated with the collection:* 2,750.5 annual burden hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE., 3E.405B,
Washington, DC 20530.

Dated: September 22, 2017.

Melody D. Braswell,

*Department Clearance Officer for PRA, U.S.
Department of Justice.*

[FR Doc. 2017-20736 Filed 9-27-17; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with the Section 223 (19 U.S.C. 2273) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (“Act”), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (“TAA”) for workers by (TA-W) number issued during the period of *June 5, 2017 through August 18, 2017*. (This Notice primarily follows the language of the Trade Act. In some places however, changes such as the inclusion of subheadings, a reorganization of language, or “and,” “or,” or other words are added for clarification.)

Section 222(a)—Workers of a Primary Firm

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements under Section 222(a) of the Act (19 U.S.C. 2272(a)) must be met, as follows:

(1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) is that a significant number or proportion of the workers in such workers’ firm (or “such firm”) have become totally or partially separated, or are threatened to become totally or partially separated; and (2(A) or 2(B) below)

(2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied by either (A) the Increased Imports Path, or (B) the Shift in Production or Services to a Foreign Country Path/Acquisition of Articles or Services from a Foreign Country Path, as follows:

(A) Increased Imports Path

(i) The sales or production, or both, of such firm, have decreased absolutely; and (ii and iii below)

(ii)(I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased or

(II)(aa) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased; or

(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by such firm, have increased; or

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; and

(iii) the increase in imports described in clause (ii) contributed importantly to such workers’ separation or threat of separation and to the decline in the sales or production of such firm; or

(B) Shift in Production or Services to a Foreign Country Path or Acquisition of Articles or Services From a Foreign Country Path

(i)(I) There has been a shift by such workers’ firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; or

(II) such workers’ firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm; and

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers’ separation or threat of separation.

Section 222(b)—Adversely Affected Secondary Workers

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(b) of the Act (19 U.S.C. 2272(b)) must be met, as follows:

(1) A significant number or proportion of the workers in the workers’ firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) the workers’ firm is a supplier or downstream producer to a firm that

employed a group of workers who received a certification of eligibility under Section 222(a) of the Act (19 U.S.C. 2272(a)), and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection 222(c)(3) and (4) of the Act (19 U.S.C. 2272(c)(3) and (4))); and

(3) either—

(A) the workers’ firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers’ firm; or

(B) a loss of business by the workers’ firm with the firm described in paragraph (2) contributed importantly to the workers’ separation or threat of separation determined under paragraph (1).

Section 222(e)—Firms Identified by the International Trade Commission

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(e) of the Act (19 U.S.C. 2272(e)) must be met, by following criteria (1), (2), and (3) as follows:

(1) The workers’ firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1) of the Act (19 U.S.C. 2252(b)(1)); or

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1) of the Act (19 U.S.C. 2436(b)(1)); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A)); and

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) of the Trade Act (19 U.S.C. 2252(f)(1)) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3) (19 U.S.C. 2252(f)(3)); or

(B) notice of an affirmative determination described in subparagraph (B) or (C) of paragraph (1)

is published in the **Federal Register**; and
 (3) the workers have become totally or partially separated from the workers' firm within—
 (A) the 1-year period described in paragraph (2); or
 (B) not withstanding section 223(b) of the Act (19 U.S.C. 2273(b)), the 1-year

period preceding the 1-year period described in paragraph (2).
Affirmative Determinations for Trade Adjustment Assistance
 The following certifications have been issued. The date following the company name and location of each

determination references the impact date for all workers of such determination.
 The following certifications have been issued. The requirements of Section 222(a)(2)(A) (Increased Imports Path) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
90,314	Pacific Fir Lumber Company	Sheridan, OR	January 1, 2014.
91,659	Whiting Paper Company	Menasha, WI	April 1, 2015.
91,837	ConocoPhillips, Bartlesville Shared Services, Corporate Staff, TEKsystems, etc	Bartlesville, OK	May 23, 2015.
91,890	MI Swaco, Schlumberger Technology Corporation	New Orleans, LA	June 8, 2015.
91,922	Seattle-Snohomish Mill Co., Inc	Snohomish, WA	June 14, 2015.
92,195	Daimler Trucks North America, Mt. Holly Truck Manufacturing Plant	Mt. Holly, NC	August 18, 2015.
92,211	Petram Enterprises Inc	Tualatin, OR	September 14, 2015.
92,211A	Petram Enterprises Inc., Aerotek Inc	Sheridan, OR	September 14, 2015.
92,463	Brayton Point Energy, LLC, Dynegy Resource III, LLC, Corestaff	Somerset, MA	December 5, 2015.
92,468	General Motors (GM), Lansing Grand River Assembly Plant, Development Dimensions International.	Lansing, MI	July 22, 2017.
92,468A	GM Subsystems Manufacturing, LLC, Development Dimensions International	Lansing, MI	December 7, 2015.
92,489	SuperGenius Industries, LLC	Oregon City, OR	December 13, 2015.
92,491	Sappi North America (S.D. Warren Company), Sappi Limited	Allentown, PA	May 21, 2016.
92,503	Asurion Services, LLC, Work at Home Employees, N.E.W. Customer Service Companies, LLC.	Nashville, TN	December 22, 2015.
92,617	Aero-Mach Labs, Inc	Wichita, KS	February 7, 2016.
92,627	Ameridial Inc	Spindale, NC	February 7, 2016.
92,656	Hyundai Rotem USA Corporation, Hyundai Rotem Company, Aerotek	Philadelphia, PA	February 21, 2016.
92,661	McFarland Cascade Holdings, Inc., Stella-Jones Corporation	Rochester, WA	February 15, 2016.
92,661A	McFarland Cascade Holdings, Inc., Stella-Jones Corporation	Arlington, WA	February 15, 2016.
92,661B	McFarland Cascade Holdings, Inc., Stella-Jones Corporation	Shelton, WA	February 15, 2016.
92,700	Inteva Products, LLC, The Renco Group, Inc., The Bartech Group	Adrian, MI	March 6, 2016.
92,742	Panasonic Appliances Company of America, Panasonic Corporation of North America.	Danville, KY	March 18, 2016.
92,761	Streamline International, Convergys Corporation	Wilsonville, OR	March 24, 2016.
92,769	River Steel, Inc	West Salem, La Crosse, WI.	March 14, 2016.
92,789	U.S. Steel Seamless Tubular Operations, LLC, Lorain Tubular Operations, United States Steel Corporation.	Lorain, OH	July 3, 2016.
92,795	Piqua Champion Foundry, Inc	Piqua, OH	April 5, 2016.
92,799	Chippewa Shoe Company, LLC, Justin Brands, Inc	Bangor, ME	April 5, 2016.
92,801	Fiat Chrysler America (FCA), Sterling Heights Assembly Plant	Sterling Heights, MI	April 6, 2016.
92,824	INDSPEC Chemical Corporation, INDSPEC Holding Corporation, Occidental Chemical Holding Corporation, etc.	Petrolia, PA	April 13, 2016.
92,840	ESCO Company, LLC, Mitsui Chemicals America, Inc	Muskegon, MI	April 25, 2016.
92,843	Majestic Wood Products II, LLC	White City, OR	April 25, 2016.
92,864	Canam Steel Corporation, Canam US Holdings, Inc., Canam Group, Inc., Aerotek.	Point of Rocks, MD	May 2, 2016.
92,866	LedVance, LLC, Osram Sylvania, LedVance GMBH, Manpower Inc., W&W Sons Contracting.	St. Marys, PA	May 6, 2017.
92,866A	Wortman Controls, Inc., Manpowergroup US, Inc., Penn Highlands Elk, LedVance, LLC, etc.	St. Marys, PA	May 3, 2016
92,869	Congoleum Corporation, Plant 2	Trenton, NJ	May 4, 2016.
92,881	DME Company LLC, Youngwood, Milacron Corporation, Aerotek Staffing Services.	Youngwood, PA	May 9, 2016.
92,913	Computer Aid, Inc., TEK Consulting, NEE Consulting LTD., SB Technical Inc	Allentown, PA	April 25, 2016.
92,919	Ernie Green Industries, Inc., eNNOVEA, LLC	Erie, PA	May 10, 2016.
92,927	New Castle Industries, Inc., Nordson Xaloy, Inc., Manpower Group US	New Castle, PA	June 1, 2016.
92,935	Jefferson Yarns, Inc	Pulaski, VA	May 19, 2016.
92,961	North American Communications, Spherion Staffing, Aerotek	Duncansville, PA	June 20, 2016.
93,014	Pacific Coast Feather Company, Down and Feather Division of PCFC, Hollander Sleep Products, etc.	Des Plaines, IL	July 13, 2016.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (Shift in Production or

Services to a Foreign Country Path or Acquisition of Articles or Services from

a Foreign Country Path) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
91,762	R.R. Donnelley & Sons Company, Staffmark, Kelly Services	Portland, OR	April 29, 2015.
91,830	Epsilon Data Management, LLC, ADS Alliance Data Systems, Inc., Sogeti, Theorem.	Irvine, TX	May 16, 2015.
92,199	Dell Financial Services LLC, Dell Technologies Inc	Round Rock, TX	September 12, 2015.
92,343	Elie Tahari, Ltd., Patternmakers, Samplemakers	New York, NY	October 18, 2015.
92,400	International Automotive Components (IAC), Aerotek	Iowa City, IA	November 5, 2015.
92,436	Cameron International Corporation, Schlumberger Ltd., Process Systems	Electra, TX	March 13, 2016.
92,459	Unilever United States, Inc., IT Department, Unilever NV, Monroe Staffing Service LLC.	Trumbull, CT	December 2, 2015.
92,459A	Unilever United States, Inc., IT Department, Unilever NV, Monroe Staffing Service LLC.	Shelton, CT	December 2, 2015.
92,459B	Unilever United States, Inc., IT Department, Unilever NV	Englewood Cliffs, NJ	December 2, 2015.
92,511	Source One Cable Technology, Inc	San Jose, CA	December 28, 2015.
92,545	BlueLine Rental, LLC, Vander Intermediate Holding III Corporation, Accounts Payable Group, etc.	Shippensburg, PA	January 11, 2016.
92,583	Davita Medical Management, LLC, HealthCare Partners, LLC, DaVita, Inc., Medical Claims Processing.	El Segundo, CA	January 26, 2016.
92,618	Bank of America, Home Affordable Program, Bank of America N.A	Plano, TX	January 25, 2016.
92,625	Tronc, Inc., Technology, Apex Systems, Bitwise, Infosys, iSpace, etc	Chicago, IL	February 6, 2016.
92,625A	Tronc, Inc., Tribune Publishing, Technology, Tata Consulting Services	Lewisville, TX	February 6, 2016.
92,625B	Tronc, Inc., Technology, Tata Consulting Services	Allentown, PA	February 6, 2016.
92,625C	Tronc, Inc., Technology, iSpace, Tata Consulting Services, 501 North Calvert Street.	Baltimore, MD	February 6, 2016.
92,625D	Tronc, Inc., Technology, Apex Systems, iSpace, Tata Consulting Services	Orlando, FL	February 6, 2016.
92,625E	Tronc, Inc., Technology, Tata Consulting Services	Deerfield Beach, FL ..	February 6, 2016.
92,625F	Tronc, Inc., Technology, Infosys, iSpace, Tata Consulting, 202 West Broad Street.	Los Angeles, CA	February 6, 2016.
92,625G	Tronc, Inc., Technology, Tata Consulting Services	Hartford, CT	February 6, 2016.
92,625H	Tronc, Inc., Technology, iSpace, Tata Consulting Services, 600 B. Street, Suite 1201.	San Diego, CA	February 6, 2016.
92,625I	Tronc, Inc., Technology, iSpace, Tata Consulting Services, 350 Camino de la Reina.	San Diego, CA	February 6, 2016.
92,626	Kaba Ilco Corp., Dormakaba Group, The Resource, Aerotek, Accountemps	Winston-Salem, NC ...	January 11, 2016.
92,657	The Seattle Times, Pre-Press Department, Traffic Central Group	Seattle, WA	February 16, 2016.
92,663	Lionbridge Technologies, Inc., ACO Project Division	Bellevue, WA	February 16, 2016.
92,668	Thomson Reuters, Pontoon	Stamford, CT	February 21, 2016.
92,683	IntelliServ, Inc., National Oilwell Varco, Inc., Grant Prideco, Inc., Elwood Staffing, etc.	Provo, UT	February 27, 2016.
92,694	LifeScan Products LLC, Kelly Services Worksense	Aguadilla, PR	March 3, 2016.
92,695	Delta Products Corporation, Aerotek Staffing	Hillsboro, OR	March 3, 2016.
92,696	Littelfuse Inc., Traffic, Workforce	Eagle Pass, TX	March 3, 2016.
92,711	Amdocs Incorporated, Amdocs Limited, GSS NAM PSG	Champaign, IL	March 9, 2016.
92,713	Tronc, Inc., Finance Division, NIIT Technologies, Inc	Fountain Valley, CA ..	March 9, 2016.
92,719	Burleigh Point LTD, Billabong International LTD, RVCA, Quality Control, 24/7 Talent.	Irvine, CA	March 10, 2016.
92,722	Exacq Technologies, Inc., Sensormatic Electronics, LLC, Tyco International, Johnson Controls, Inc.	Fishers, IN	March 13, 2016.
92,723	Hexion, Inc., Forest Products	Mount Jewett, PA	March 13, 2016.
92,739	Micrometals Texas, Inc., Micrometals, Inc., Manpower, Inc	Abilene, TX	March 16, 2016.
92,740	NSi Industries LLC, Adecco, Direct Staffing Solutions	Mount Vernon, NY ...	March 16, 2016.
92,751	Epicor Software Corporation, Epicor, Inc., ZeroChaos	Bensalem, PA	March 21, 2016.
92,763	Shoes for Crews, LLC, Customer Service Call Center, Auxis Managed Services LLC.	West Palm Beach, FL ..	March 23, 2016.
92,766	Mission Solar Energy, LLC, OCI Company Limited, Tri-Starr Personnel	San Antonio, TX	March 27, 2016.
92,770	St. John Knits, Inc., Knitwear, St. John Knits International, Inc	Irvine, CA	March 27, 2016.
92,771	Gloucester Seafood Processing, Inc., Jorzac Corp., EDA Staffing, Inc	Gloucester, MA	March 27, 2016.
92,784	Pall Corporation, Danaher, Food and Beverage Business Unit (F&B)	Westborough, MA	March 31, 2016.
92,785	Mitel, Collections, Accountemps, Prologistix	Reno, NV	April 3, 2016.
92,788	Staples Shared Services Center, LLC, Financial Share Services, Staples Contract & Commercial, Inc., Tapfin, etc.	Columbia, SC	April 3, 2016.
92,790	A123 Systems LLC, Adecco—USA	Romulus, MI	April 4, 2016.
92,790A	A123 Systems LLC, Adecco—USA	Livonia, MI	April 4, 2016.
92,794	Diamond Materials Tech, Inc., Meyer Burger, Robert Half, Elwood Staffing	Colorado Springs, CO ..	April 5, 2016.
92,797	AF Gloenco Inc., AFGlobal Corporation	Greenville, SC	April 7, 2016.
92,800	Dell USA, L.P., Global Support Administration, Dell Technologies Inc	Round Rock, TX	April 6, 2016.
92,802	Firstsource Solutions USA, LLC, Firstsource Solutions Ltd., Information Technology, etc.	Louisville, KY	April 6, 2016.
92,803	Lasermasters, LLC dba LMI Solutions, PHXCO, LLC, GPS Holdings, LLC, Solutions Staffing.	Phoenix, AZ	April 5, 2016.
92,803A	Lasermasters, LLC dba LMI Solutions, PHXCO, LLC, GPS Holdings, LLC, Remedy Intelligent Staffing.	McFarland, WI	April 5, 2016.
92,804	Schneider Electric, Volt	Peru, IN	April 6, 2016.
92,808	USF Reddaway Inc., Corporate, YRC Worldwide Inc., Integrity Staffing Solutions, etc.	Tualatin, OR	April 7, 2016.

TA-W No.	Subject firm	Location	Impact date
92,810	Avid Technology, Inc., Global Logic, Advantage, Click to Play Media, Inc., Aaron Martin Media.	Burlington, MA	April 6, 2016.
92,812	Sharp Laboratories of America, Inc., Sharp Electronics Corporation, Aerotek, Azad, etc.	Camas, WA	April 6, 2016.
92,813	Storm Manufacturing Group Inc. (SMG), Machine Shop, Storm Industries Inc	Torrance, CA	April 10, 2016.
92,814	Rockwood Casualty Insurance Company, Argo Group International Holdings, LTD., Wipro, Secure 24, CSS Corporation.	Rockwood, PA	April 11, 2016.
92,814A	Rockwood Casualty Insurance Company, Argo Group International Holdings, LTD., Wipro, Secure 24, CSS Corporation.	San Antonio, TX	April 11, 2016.
92,815	Land O'Lakes, Inc., IT-Master Data Management	Roseville, MN	April 11, 2016.
92,829	Thomson Reuters, Finance & Risk Trading, Pontoon	New York, NY	April 17, 2016.
92,831	Monsoon Inc	Portland, OR	April 19, 2016.
92,832	Finisar Corporation, Operations, Manufacturing, Purchasing, and Engineering	Horsham, PA	April 25, 2017.
92,844	Arrow International, Teleflex, Aerotek	Asheboro, NC	May 8, 2017.
92,844A	The Agency, Arrow International, Teleflex	Asheboro, NC	April 24, 2016.
92,848	Watts Regulator Company, Orion Enterprises, Orion Enterprises, Inc., Morgan Hunter, etc.	Kansas City, KS	April 26, 2016.
92,851	Consolidated Metco, Inc., Bryson City Plant, Amsted Industries Incorporated, Manpower, Aerotek.	Bryson City, NC	April 13, 2016.
92,852	Essentra Components, Information Technology Department, Essentra plc, Nicholas Matteson.	Erie, PA	April 27, 2016.
92,852A	Essentra Components, Information Technology Department, Essentra plc, Nicholas Matteson.	Westchester, IL	April 27, 2016.
92,856	Blue Cross & Blue Shield of Rhode Island, Randstad, Aerotek, Kforce, TEKsystems.	Providence, RI	April 28, 2016.
92,857	TE Connectivity/Masurement Specialties, TE Connectivity Corporation, Kelly Services, Aerotek, AppleOne, etc.	Chatsworth, CA	May 1, 2016.
92,860	Mellanox Technologies Silicon Photonics, Inc., Kolura, Inc., Mellanox Technologies, Inc., Aerotek.	Monterey Park, CA	April 26, 2016.
92,863	General Mills Services, Inc., Information Technology (IT), Finance, and Administrative Services, etc.	Golden Valley, MN	May 1, 2016.
92,865	Goodyear Commercial Tire & Service Centers, Corporate Office & Field Leadership, etc.	Fort Smith, AR	May 3, 2016.
92,867	RR Donnelley, Office Tiger, Larson Brown, Bachrach Group	New York, NY	April 17, 2016.
92,868	Zebra Technologies Corporation, Holtsville-Zebra Enterprise Visibility & Mobility (EVM) Segment, etc.	Holtsville, NY	May 4, 2016.
92,870	Mondi Akrosil, LLC, Consumer Packaging Division, Mondi International Holdings B.V., Iforce, etc.	Lancaster, OH	May 4, 2016.
92,874	ASG Technologies Group, Inc	Arlington, TX	May 8, 2016.
92,875	Baldor Electric Company, RMMG Division, ABB Ltd., Penmac Staffing, TEC Staffing Services.	Fort Smith, AR	May 8, 2016.
92,876	Medtronic	Columbia Heights, MN.	May 8, 2016.
92,876A	Medtronic	Coon Rapids, MN	May 8, 2016.
92,878	Trombetta, Trombetta Electronics Division, Trumpet Holdings, Inc	Malden, MA	May 2, 2016.
92,879	Beaver-Visitec International, Inc., Beaver-Visitec International Holdings, Inc., NESO Staffing Corporation, etc.	Waltham, MA	April 28, 2016.
92,884	Medical Business Services NW, Inc	Tigard, OR	May 11, 2016.
92,886	Maggy London Int'l Limited, 530 7th Avenue	New York, NY	August 20, 2016.
92,886A	Maggy London Int'l Limited, 132 West 36th Street, 8th Floor	New York, NY	May 10, 2016.
92,888	Conduent Business Services, Healthcare, Xerox Business Services, Aerotek, Randstad.	Moosic, PA	May 12, 2016.
92,889	ContiTech North America, Inc., ContiTech Division, Continental AG	Truman, AR	May 15, 2016.
92,892	Timex Group USA, Inc., Timex Group B.V., Express Employment, FirstStaff Staffing, etc.	North Little Rock, AR	May 15, 2016.
92,896	AltioStar Networks, Inc., Corporate Division, Blacktree Technical Group, Express Employment, etc.	Tewksbury, MA	May 16, 2016.
92,898	Duracell Manufacturing, Duracell Manufacturing, Inc., Technical Associates, XLC Services, etc.	Lancaster, SC	May 15, 2016.
92,900	Bank of America, Bank of America, N.A	Simi Valley, CA	May 17, 2016.
92,901	McCain Foods USA, Inc., Associated Staffing, Advance Services, Inc., Malace HR, etc.	Grand Island, NE	May 18, 2016.
92,902	OECO LLC, Meggitt Sensing Systems, Meggitt PLC, Aerotek, CDI Corp., etc	Milwaukie, OR	May 18, 2016.
92,903	The Boeing Company, Boeing Commercial Aircraft (BCA), American Cybersystems Inc.	Tukwila, WA	August 7, 2017.
92,903A	The Boeing Company, Boeing Commercial Aircraft (BCA), Apollo Professional Solutions Inc., etc.	Portland, OR	May 19, 2016.
92,910	ABB Inc., Human Resource Services, Pontoon Solutions	Cary, NC	May 22, 2016.
92,912	Dr. Leonard's Healthcare Corporation, Order Services Division, AmeriMark Holdings.	Lincoln, NE	May 23, 2016.
92,914	Trostel, Ltd., Preferred Compounding Corporation	Lake Geneva, WI	May 17, 2016.
92,915	Bloomberg L.P., Global Data Division, Bloomberg Inc., Forrest Solutions Group, etc.	Skillman, NJ	May 24, 2016.
92,916	Kelvion Inc., Kelvion, Manpower, JFC Global, Miller Brothers Staffing (MBS)	York, PA	May 24, 2016.

TA-W No.	Subject firm	Location	Impact date
92,923	Health Care Service Corporation, Information Technology (Infrastructure) Services.	Chicago, IL	May 15, 2016.
92,928	Dell USA, L.P., Americas Dispatch Support Center, Dell Technologies Inc	Round Rock, TX	May 22, 2016.
92,930	Robertshaw, Burner Systems International, Inc. Belfex, Express, Resource MFG, etc.	Chattanooga, TN	June 2, 2016.
92,931	United Parcel Service, Columbia Collection on Delivery (COD), Spherion Staffing Services.	West Columbia, SC	June 5, 2016.
92,933	Wolfe Tory Medical Inc., Teleflex, Inc., Aerotek, Express Employment, Medical Professionals, etc.	Salt Lake City, UT	June 5, 2016.
92,938	Adient US, LLC, Lexington Plant, Adient PLC, Manpower, 659 Natchez Trace Drive.	Lexington, TN	June 8, 2016.
92,938A	Adient US, LLC, Lexington Plant, Adient PLC, Manpower, 450 Mig Drive	Lexington, TN	June 8, 2016.
92,939	SKF USA, Inc., San Diego Office, AB SKF, Target CW, PrideStaff	San Diego, CA	June 9, 2016.
92,941	The Prudential Insurance Company of America, ILI Technology & Business Services Division, Atlantic Partners, etc.	Roseland, NJ	June 9, 2016.
92,942	SECO Manufacturing, Trimble, Inc., Trimble Navigation, Manpower, Clear Path	Mound City, IL	June 12, 2016.
92,946	Carlisle Etcetera LLC, Accounting Department, Royal Spirit Limited	New York, NY	June 12, 2016.
92,947	Vista Inkjets, Inc., EmployBridge, Express Staffing Employment Professionals	Tucson, AZ	April 3, 2016.
92,950	Health Care Service Corporation, Information Technology Infrastructure) Services.	Richardson, TX	June 14, 2016.
92,962	Fisher & Ludlow Inc., Nucor Grating	Litchfield, IL	June 20, 2016.
92,968	Fiserv, Inc., Randstad	Lincoln, NE	June 22, 2016.
92,969	Louis Garneau USA, Inc., Production Floor Division, Louis Garneau Sports, Inc	Derby, VT	June 22, 2016.
92,974	Checkfreepay Corporation, Fiserv, Inc., Randstad	Wallingford, CT	June 26, 2016.
92,978	Global Display Solutions, Inc., GDS Holding, Dickey's Staffing, Accountemps	Rockford, IL	June 5, 2016.
92,979	Integrated Energy Technologies Inc., Doncasters, Inc., Express Employment	Chula Vista, CA	June 28, 2016.
92,980	Technicolor, Inc., Financial Shared Services, Volt Workforce Solutions, CDI Corporation, etc.	Ontario, CA	June 28, 2016.
92,981	TomTom North America, Inc., Sourcing Operations Division	Lebanon, NH	June 28, 2016.
92,982	Williams Controls, Curtiss-Wright	Portland, OR	June 29, 2016.
92,988	Coax LLC, High Speed Interconnects LLC	Tigard, OR	June 30, 2016.
92,989	HSBC Technology and Services, USA (HTSU), HSBC Technology and Services, HSBC North America Holdings, Inc., etc.	Depew, NY	June 30, 2016.
92,992	Hewlett Packard Enterprise, Enterprise Services—Finance Division, Hewlett Packard Enterprise, etc.	Chicago, IL	July 3, 2016.
92,997	HSBC Technology and Services, USA (HTSU), HSBC Technology and Services, HSBC North America Holdings Inc., etc.	Jersey City, NJ	July 5, 2016.
92,998	Nebraska Land Title and Abstract Company (NLTA), CBSHOME Real Estate Company.	Omaha, NE	July 6, 2016.
92,999	Atlas Copco Secoroc LLC, Rock Drilling Tools Division, Atlas Copco AB, Onin Staffing, etc.	Grand Prairie, TX	July 7, 2016.
93,000	CA, Inc	Ewing, NJ	July 7, 2016.
93,002	Motor Appliance Corporation	Blytheville, AR	July 7, 2016.
93,003	DXC Technology, HPE Enterprise Services, Collections Division	Omaha, NE	July 10, 2016.
93,004	IEEE, Publishing Operations Division, Randstad Professionals, APN Consultants.	Piscataway, NJ	May 30, 2016.
93,007	Commemorative Brands, Inc., American Achievement Corporation	Austin, TX	August 9, 2016.
93,008	Conduent Business Services, LLC, Corporate Function Division, Conduent State Healthcare, LLC, etc.	Rochester, NY	July 11, 2016.
93,008A	Conduent Business Services, LLC, Corporate Function Division, Conduent State & Local Solutions, Inc., etc.	Webster, NY	July 11, 2016.
93,016	Flint Group Printing Systems US LLC, Flint Group North America Division, J & J General Maintenance, Inc.	Huntington, WV	July 12, 2016.
93,018	Associated Fuel Pump Systems Corporation, Denso International America (Denso Corporation), Robert Bosch GMBH, etc.	Anderson, SC	July 14, 2016.
93,018A	Human Technologies, Incorporated, Manufacturing Solutions, Associated Fuel Pump Systems Corporation.	Williamston, SC	July 14, 2016.
93,024	International Business Machines (IBM), Global Technology Services (GTS), Technology Support Services (TSS), etc.	Research Triangle Park, NC.	July 18, 2016.
93,026	St. Vincent Health, Transcription Department, Ascension Health	Indianapolis, IN	July 18, 2016.
93,027	ODU-USA, Inc., Otto Dunkel GmbH, Crossroads Staffing Service	Camarillo, CA	July 19, 2016.
93,032	Ditech Financial LLC, IT Application Development Services, Walter Investment Management Corp., etc.	St. Paul, MN	July 21, 2016.
93,036	Health Care Service Corporation, Information Technology Infrastructure) Services.	Naperville, IL	July 24, 2016.
93,036A	Health Care Service Corporation, Information Technology Infrastructure) Services.	Waukegan, IL	July 24, 2016.
93,037	TCF National Bank, TCF Financial Corporation, Sioux Falls Division	Sioux Falls, SD	June 28, 2016.
93,045	TMCI Holdings Inc., R.A.B. Food Group, The Manischewitz Company, Staff Management Group, IRG.	Newark, NJ	July 27, 2016.
93,062	Delta Apparel, Inc., Fun Tees Division, Art Separation Department	Concord, NC	August 4, 2016.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
91,941	Mega Power Inc.	Hickory, KY	June 20, 2015.
92,106	Gonzalez Group, LLC	Litchfield, MI	August 11, 2015.
92,260	Yelding, Inc.	Naugatuck, CT	September 27, 2015.
92,324	ArcelorMittal Plate LLC, Coatesville Division, ArcelorMittal USA, LLC, Adecco Group, Dillon, etc.	Coatesville, PA	October 11, 2015.
92,520	Williamsport Foundry Co., Inc	Williamsport, PA	January 3, 2016.
92,605	M+W U.S., Inc., M+W Americas, Inc., M+W Group GmbH, NSTAR Global Services, Inc.	Plano, TX	February 2, 2016.
92,701	BorgWarner Thermal Systems Inc., BorgWarner Inc	Cadillac, MI	March 6, 2016.
92,730	Magna Seating Systems of America, Inc., Lordstown Seating Systems, Magna International Inc., etc.	Warren, OH	March 14, 2016.
92,757	International Automotive Components (IAC) Huron, LLC, Hard Trim, International Automotive Components.	Huron, OH	March 23, 2016.
92,817	Swartfager Welding Inc.	Knox, PA	April 11, 2016.
92,830	Glacier Line Logging, Inc.	Libby, MT	April 18, 2016.
92,943	Madico, Incorporated, LINTEC Corporation, North Shore Data, NESC Staffing Company.	Woburn, MA	June 9, 2016.
93,035	General Motors (GM), Warren Global Propulsion Systems, Development Dimensions International.	Warren, MI	July 25, 2016.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
91,337	Syncreon Logistics (USA) LLC, Syncreon Technology (USA) LLC, Staffmark	Torrance, CA	January 12, 2015.

Negative Determinations for Worker Adjustment Assistance
 In the following cases, the investigation revealed that the eligibility criteria for TAA have not been met for the reasons specified. The investigation revealed that the requirements of Trade Act section 222(a)(1) and (b)(1) (significant worker total/partial separation or threat of total/partial separation), or (e) (firms identified by the International Trade Commission), have not been met.

TA-W No.	Subject firm	Location	Impact date
92,300	GEX Incorporated	Atkinson, NH.	
92,713A	Tronc, Inc., Finance Division, NIIT Technologies, Inc	Los Angeles, CA.	
92,764	Rosemount, Inc., Emerson Electric Co., Volt Workforce Solutions	Shakopee, MN.	
92,826	Honeywell International, Inc., Home and Building Technology Division, Honeywell Security and Fire, etc.	Melville, NY.	
92,872	Allied Ring Corporation, Mahle Engine Components USA, Riken Corporation of America, Adecco.	St. John, MI.	
92,885	Surgical Specialties Corporation, Angiotech Pharmaceuticals, Inc., Gage Personnel, Adecco Staffing.	Reading, PA.	
92,899	EMC Corporation, Data Protection, Dell, Inc., Dell Technologies, Inc	Hopkinton, MA.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both), or (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA-W No.	Subject firm	Location	Impact date
92,708	HCL America Inc., Infrastructure Division, HCL Technologies Ltd	Mesquite, TX.	
92,737	FIS Shareholder Systems LLC, Fidelity National Information Services, Inc	Kansas City, MO.	
92,838	DJO Global, Insurance Bracing, Office Care, Regeneration Division, DJO Global, LLC etc.	New Brighton, MN.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports), (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2)

(supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose

workers are certified eligible to apply for TAA), and (e) (International Trade

Commission) of section 222 have not been met.

TA-W No.	Subject firm	Location	Impact date
92,063	Brenntag Pacific, Inc., Brenntag North America, Inc., Brenntag Group	Portland, OR.	
92,070	Bose Corporation, Printed Circuit Board Design Group, R&D Building	Framingham, MA.	
92,212	ITT Educational Services, Inc	Dearborn, MI.	
92,342	Volt Information Sciences, Staffing Time and Expense Division	Orange, CA.	
92,351	Transocean Offshore Deepwater Drilling Inc., Deepwater Champion Rig, Transocean Entities Holding GmbH.	Houston, TX.	
92,507	Halliburton Energy Services, Inc., Artificial Lift Product Service Line	Tulsa, OK.	
92,527	Fuzion Technologies Inc	Freeport, PA.	
92,581	Springs Window Fashions, LLC, AAA Personnel Services, STS Staffing and Temporary Services.	Reno, NV.	
92,598	Verizon Wireless, 10734 International Drive, Call Center Operations	Rancho Cordova, CA.	
92,613	Evonik Corporation, Kelly Services	Portland, OR.	
92,621	Silverack, LLC	Brea, CA.	
92,623	ATCO Structures & Logistics (USA), Inc., Gem State Staffing, Personnel Plus	Pocatello, ID.	
92,636	Verizon Wireless	Lincoln, NE.	
92,649	Kleer Fax Inc	Amityville, NY.	
92,651	Verizon Wireless, Call Center Operations	Rochester, NY.	
92,666	Dickard Widder Industries	Maspeth, NY.	
92,717	Aquion Energy, Inc., Manpower, Adecco, Tops Staffing	Pittsburgh, PA.	
92,717A	Aquion Energy, Inc., Manpower, Adecco, Tops Staffing	Mount Pleasant, PA.	
92,725	Stephens Paper Company	Stephens, AR.	
92,767	Ocwen Financial Corporation, Ocwen Loan Servicing, LLC, Homeward Residential.	Houston, TX.	
92,775	MultiCare Tacoma	Auburn, WA.	
92,777	Macy's Credit and Customer Services, Inc., Macy's Retail Holdings, Inc	Bridgeton, MO.	
92,787	BCBG Max Azria Group, LLC	Vernon, CA.	
92,819	Fox Rent A Car, Inc	Tulsa, OK.	
92,825	Marmon/Keystone LLC, The Marmon Group	East Butler, PA.	
92,825A	Marmon/Keystone LLC, The Marmon Group	Butler, PA.	
92,828	National Steel and Shipbuilding Company, General Dynamics Company, Aerotek, Ameriforce, AMP United, etc.	San Diego, CA.	
92,920	Health Care Service Corporation, Marion Claims Front E Department, Kelly Services.	Marion, IL.	
92,921	JPMorgan Chase & Co., Commercial Banking—Know Your Customers (KYC) Operations, etc.	Columbus, OH.	
92,922	Ralph Lauren Corporation, Lyndhurst Business Intelligence Information Technology (IT) Services, etc.	Lyndhurst, NJ.	
92,948	CompuCom, EUE Catalog Management	Plano, TX.	
92,957	Zippo Manufacturing Company, Congress Street Facility, Walker Business & Staffing Services.	Bradford, PA.	
92,964	Greystone Manufacturing, LLC, HireCall	Sand Springs, OK.	
92,970	Excel Industries, Inc., Hustler Turf Equipment, Inc., Team Employment, LSI Staffing.	Hesston, KS.	
92,994	Buckeye Hone Company, Inc., Mancan	Bucyrus, OH.	
93,033	Kmart Stores of Texas, LLC, 1120 McRae Blvd. Store	El Paso, TX.	

Determinations Terminating Investigations of Petitions for Trade Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and

on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA-W No.	Subject firm	Location	Impact date
92,297	Austin Westran LLC	Byron, IL.	
92,461	Remy USA Industries, LLC, 215 Candlewood Road, Remy International, Inc	Bay Shore, NY.	
92,461A	Remy USA Industries, LLC, 12 Wisconsin Court, Remy International, Inc	Bay Shore, NY.	
92,658	Meadville Forging Company, The Keller Group, Inc	Meadville, PA.	
92,680	Data Listing Services dba The Connection	Olean, NY.	
92,806	Entergy Palisades Nuclear Power Plant	Covert, MI.	

The following determinations terminating investigations were issued

in cases where the petition regarding the investigation has been deemed invalid.

TA-W No.	Subject firm	Location	Impact date
92,434	Federal Republic of Germany, German Air Force Flying Training Center (GAF FTC).	Holloman Air Force Base, NM.	
92,625J	Tronc, Inc., Technology, Tata Consulting Services	Newport News, VA.	
92,625K	Tronc, Inc., Technology, Tata Consulting Services	Washington, DC.	
92,625L	Tronc, Inc., Technology, Tata Consulting Services	Annapolis, MD.	
92,625M	Tronc, Inc., Technology, Tata Consulting Services, 300 E. Cromwell Street	Baltimore, MD.	
92,625N	Tronc, Inc., Technology, Tata Consulting Services, 2000 E. 8th Street	Los Angeles, CA.	
92,625O	Tronc, Inc., Technology, Tata Consulting Services	Irwindale, CA.	

The following determinations terminating investigations were issued because the worker group on whose behalf the petition was filed is covered under an existing certification.

TA-W No.	Subject firm	Location	Impact date
92,469	General Motors (GM), Lansing Grand River Assembly Plant	Lansing, MI.	
92,513	Trinity Industries, Inc	Cartersville, GA.	
92,549	Trinity Industries, Inc	Oklahoma City, OK.	
92,686	Crew Knitwear LLC	Los Angeles, CA.	
92,716	Siemens Government Technologies, Inc	Wellsville, NY.	
92,735	Ericsson, Inc., Service Line Support and Repair, Region North America Network Services.	Plano, TX.	
92,749	Aramark Services, Inc., Aramark Management Services Limited Partnership, Aramark Corporation, etc.	Omaha, NE.	
92,783	Verizon Business Network Services, Inc., Client Service Assurance Group	Cary, NC.	
92,809	Verizon Business Network Services, Inc., Client Services Assurance Group	Cary, NC.	
92,836	Modis E&T, LLC, Adecco Group	Boise, ID.	
92,850	Caterpillar, Inc., Industry Solutions and Components	Houston, PA.	
92,858	Emblem Health	New York, NY.	
92,873	Luvo USA, LLC, f/k/a Provita Cuisine LLC, Luvo, Inc	Schaumburg, IL.	
92,877	MarketSource, Inc, Retail Claims Support Center, HP, Inc., etc	Vancouver, WA.	
92,883	Intel Corporation, Sales and Marketing Information Technology (SMIT) Group	Hillsboro, OR.	
92,891	Medtronic	Columbia Heights, MN.	
92,904	The Boeing Company, Boeing Commercial Aircraft (BCA)	Portland, OR.	
92,907	FCR/First Call Resolution	Roseburg, OR.	
92,907A	FCR/First Call Resolution	Grants Pass, OR.	
92,907B	FCR/First Call Resolution	Coos Bay, OR.	
92,907C	FCR/First Call Resolution	Veneta, OR.	
92,907D	FCR/First Call Resolution	Eugene, OR.	
92,917	Breg, Inc	Grand Prairie, TX.	
92,918	Breg, Inc., Bledsoe Brace Systems	Plano, TX.	
92,966	Cadmus Journal Services, Inc., Cenveo, Inc	Lancaster, PA.	
92,972	Hewlett Packard Enterprise Services, Service Request Management Division, Hewlett Packard Enterprise.	Pontiac, MI.	
93,005	Infotree Services, General Electric	Grove City, PA.	
93,012	Tata Consultancy Services	Redmond, WA.	
93,013	Contemporary Staffing Solutions, One Call Care Management	Jacksonville, FL.	
93,029	Experis-NA, Inc., Outsourced Managed Solutions, HP Research and Development Division, etc.	Boise, ID.	
93,030	Tronc, Inc., Formerly Tribune Publishing	Lewisville, TX.	
93,041	Teleflex/Wolf Tory, Inc	Salt Lake City, UT.	
93,060	Commemorative Brands Inc	Austin, TX.	

The following determinations terminating investigations were issued because the petitioning group of workers is covered by an earlier petition that is the subject of an ongoing investigation for which a determination has not yet been issued.

TA-W No.	Subject firm	Location	Impact date
92,823	Gloucester Seafood Processing, Inc., Jorzac Corp., EDA Staffing, Inc	Gloucester, MA.	
92,849	BCBG Max Azria Group, LLC	Vernon, CA.	
93,022	Durafiber Technologies	Salisbury, NC.	
93,038	Pearson, Inc	San Antonio, TX.	
93,051	Pearson Education	Boston, MA.	

I hereby certify that the aforementioned determinations were issued during the period of June 5, 2017 through August 18, 2017. These determinations are available on the Department's Web site https://www.doleta.gov/tradeact/taa/taa_search_form.cfm under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888-365-6822.

Signed at Washington, DC, this 22nd day of August 2017.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2017-20761 Filed 9-27-17; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2011-0055]

Steel Erection; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Standard on Steel Erection.

DATES: Comments must be submitted (postmarked, sent, or received) by November 27, 2017.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2011-0055, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3653, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the

Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA-2011-0055) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other materials in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT:

Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693-2222; kenney.theda@dol.gov or owen.todd@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act

also requires OSHA to obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Section 1926.752(a)(1). Description of the requirement. Based on the results of a specified method for testing field-cured samples, the controlling contractor must provide the steel erector with written notification that the concrete in the footings, piers, and walls, or the mortar in the masonry piers and walls, is at 75% of its minimum compressive-design strength or has sufficient strength to support loads imposed during steel erection. **Note:** This is not and will not be enforced for mortar in piers and walls until such time as OSHA is able to define an appropriate substitute or until an appropriate American Society for Testing and Materials (ASTM) test method is developed.

Sections 1926.752(a)(2) and 1926.755(b)(1). Description of the requirements. Under section 1926.752(a)(2), the controlling contractor, before it authorizes commencement of steel erection, must notify the steel erector in writing that any repairs, replacements, and modifications to anchor bolts (rods) have been made in accordance with section 1926.755(b)(1) which requires the controlling contractor to obtain approval from the project structural engineer of record for the repairs, replacements, and modifications.

Section 1926.753(c)(5). Description of the requirement. Employers must not deactivate safety latches on hooks or make them inoperable except for the situation when: A qualified rigger determines that it is safer to hoist and place purlins and single joists by doing so; or except when equivalent protection is provided in the site-specific erection plan.

Section 1926.753(e)(2). Description of the requirement. Employers must have the maximum capacity of the total multiple-lift rigging assembly, as well as each of its individual attachment points, certified by the manufacturer or a qualified rigger.

Sections 1926.755(b)(1) and 1926.755(b)(2). Description of the requirements. Under section 1926.755(b)(2), throughout steel erection the controlling contractor must notify the steel erector in writing of additional repairs, replacements, and modifications of anchor bolts (rods); section 1926.755(b)(1) requires that these repairs, replacements, and modifications not be made without

approval from the project structural engineer of record.

Section 1926.757(a)(4). Description of the requirement. If steel joists at or near columns span more than 60 feet, employers must set the joists in tandem with all bridging installed. However, the employer may use an alternative method of erection if a qualified person develops the alternative method, it provides equivalent stability, and the employer includes the method in the site-specific erection plan.

Section 1926.757(a)(7). Description of the requirement. Employers must not modify steel joists or steel joist girders in a way that affects their strength without the approval of the project structural engineer of record.

Sections 1926.757(a)(9) and 1926.758(g). Description of the requirements. An employer can use a steel joist, steel joist girder, purlin, or girt as an anchorage point for a fall-arrest system only with the written approval of a qualified person.

Section 1926.757(e)(4)(i). Description of the requirement. An employer must install and anchor all bridging on joists and attach all joist bearing ends before placing a bundle of decking on the joists, unless: A qualified person determines that the structure or portion of the structure is capable of supporting the bundle, the employer documents this determination in the site-specific erection plan, and follows the additional requirements specified in section 1926.757(e)(4)(ii)–(vi).

Section 1926.760(e) and (e)(1). Description of the requirements. The steel erector can leave its fall protection at the jobsite after completion of the erection activity only if the controlling contractor or its authorized representative directs the steel erector to do so and inspects and accepts responsibility for the fall protection.

1926.752(e) and Appendix A to Subpart R, “Guidelines for Establishing the Components of a Site-Specific Erection Plan: Non-mandatory Guidelines for Complying with 1926.752(e),” paragraph (a). Description of the requirement. Site-specific erection plan. Where employers elect, due to conditions specific to the site, to develop alternate means and methods that provide employee protection in accordance with section 1926.753(c)(5), section 1926.757(a)(4) or section 1926.757(e)(4), a site-specific erection plan shall be developed by a qualified person and be available at the work site. Guidelines for establishing a site-specific erection plan are contained in Appendix A to this subpart.

Appendix A to Subpart R, paragraph (b). Description of the requirement.

Paragraph (b) of the Appendix provides for the development of a site-specific erection plan. Preconstruction conference(s) and site inspection(s) are held between the erector and the controlling contractor, and others such as the project engineer and fabricator before the start of steel erection. The purpose of such conference(s) is to develop and review the site-specific erection plan that will meet the requirements of this section.

Appendix A to Subpart R, paragraphs (c), (c)(1)–(c)(9), (d), (d)(1) and (d)(2). Description of the requirement. These paragraphs of Appendix A describe the components of a site-specific erection plan, including: The sequence of erection activity developed in coordination with the controlling contractor; a description of the crane and derrick selection and placement procedures; a description of the fall protection procedures that will be used to comply with section 1926.760; a description of the procedures that will be used to comply with section 1926.759; a description of the special procedures required for hazardous non-routine tasks; a certification for each employee who has received training for performing steel erection operations as required by section 1926.761; a list of the qualified and competent persons; a description of the procedures that will be utilized in the event of rescue or emergency response; the identification of the site and project; and signed and dated by the qualified person(s) responsible for its preparation and modification.

Paragraph (c)(4)(ii) of Appendix G to Subpart R. Description of the requirement. This mandatory appendix duplicates the regulatory requirements of section 1926.502 (“Fall protection systems criteria and practices”), notably the requirements specified in paragraph (c)(4)(ii). This paragraph addresses the certification of safety nets as an option available to employers who can demonstrate that performing a drop test on safety nets is unreasonable. This provision allows such employers to certify that their safety nets, including the installation of the nets, protect workers at least as well as safety nets that meet the drop-test criteria. The employer must complete the certification process prior to using the net for fall protection, and the certificate must include the following information: Identification of the net and the type of installation used for the net; the date the certifying party determined that the net and its installation would meet the drop-test criteria; and the signature of the party making this determination.

The most recent certificate must be available at the jobsite for inspection.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed collection of information is necessary for the proper performance of the Agency’s functions, including whether the information is useful;
- The accuracy of OSHA’s estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply. For example, by using automated, or other technological information collection, and transmission techniques.

III. Proposed Actions

OSHA is requesting an adjustment increase of 9,426 burden hours, from 21,393 to 30,819 burden hours. This increase is due in part to an increase in estimated worksites associated with this subpart, from 13,864 to 16,748. The increase also results from the Agency’s determination that information collection requirements identified in Subpart R—Steel Erection’s non-mandatory Appendix A are covered by the PRA.

Type of Review: Extension of a currently approved collection.

Title: Steel Erection (29 CFR part 1926, subpart R).

OMB Control Number: 1218–0241.

Affected Public: Business or other for-profits.

Number of Respondents: 70,329.

Frequency: On occasion, annually; triennially.

Average Time per Response: Various.

Estimated Number of Responses: 92,160.

Estimated Total Burden Hours: 30,819.

Estimated Cost (Operation and Maintenance): \$0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

- (1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal;
- (2) by facsimile (fax); or
- (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0055). You may supplement electronic

submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1-2012 (77 FR 3912).

Signed at Washington, DC, on September 19, 2017.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2017-20771 Filed 9-27-17; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket ID OSHA-2012-0029]

Hawaii State Plan for Occupational Safety and Health; Operational Status Agreement

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice.

SUMMARY: This document announces a new Operational Status Agreement between the Occupational Safety and Health Administration (OSHA) and the Hawaii State Plan. This agreement specifies the respective areas of federal and state authority, and under which Hawaii will reassume enforcement coverage in the private sector.

DATES: Effective September 28, 2017.

FOR FURTHER INFORMATION CONTACT: For press inquiries: Francis Meilinger, OSHA Office of Communications; telephone (202) 693-1999; email: meilinger.francis2@dol.gov.

For general and technical information: Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs; telephone: (202) 693-2200; email: kalinowski.doug@dol.gov.

SUPPLEMENTARY INFORMATION:

Background

Hawaii administers an OSHA-approved State Plan to develop and enforce occupational safety and health standards for public-sector and private-sector employers, pursuant to the provisions of Section 18 of the Occupational Safety and Health Act (OSH Act), 29 U.S.C. 667. Pursuant to Section 18(e) of the Act, OSHA granted Hawaii "final approval" in 1984 (49 FR 19182, May 4, 1984). A final approval determination results in the relinquishment of federal concurrent enforcement authority in the state with respect to occupational safety and health issues covered by the plan, 29 U.S.C. 667(e).

During the period 2009-2012, the Hawaii State Plan faced major budgetary and staffing restraints that significantly affected its program. Therefore, the Hawaii Director of Labor and Industrial Relations requested a temporary modification of the State Plan's approval status from final approval to initial approval, to permit exercise of supplemental federal enforcement activity and to allow Hawaii sufficient time and assistance to strengthen its State Plan. On September 21, 2012, OSHA published a Final Rule in the

Federal Register (77 FR 58488) that modified the Hawaii State Plan's "final approval" determination under Section 18(e) of the Act, transitioned the Plan to "initial approval" status under Section 18(b) of the Act, and reinstated concurrent federal enforcement authority over occupational safety and health issues in the private sector. That **Federal Register** notice also provided notice of the Operational Status Agreement (OSA) between OSHA and the Hawaii Occupational Safety and Health Division (HIOSH), which specified the respective areas of federal and state authority.

HIOSH and OSHA have since worked together to strengthen the State Plan, and HIOSH has achieved the milestones established to resume practically all private-sector enforcement authority.

Notice of New Operational Status Agreement

OSHA and HIOSH signed a new OSA on April 13, 2017, which replaced the prior 2012 OSA. Federal OSHA and HIOSH will exercise their respective enforcement authorities according to the terms of the 2017 OSA between OSHA and HIOSH, which specifies the respective areas of federal and state authority. Among other things, Federal OSHA retains coverage over all federal employees, contractors, and subcontractors at Hawaii National Parks and on any other federal establishment where the land is determined to be under exclusive federal jurisdiction; private-sector maritime activities; private-sector employees within the secured borders of all military installations where access is controlled; the U.S. Postal Service, its contract workers, and contractor-operated facilities; and the enforcement of Section 11(c) of the Act, 29 U.S.C. 660(c), the Act's whistleblower provision. The Hawaii State Plan retains coverage over all state and local government employers and regains coverage over all private-sector employers not covered by federal OSHA, including marine construction not performed on vessels or other floating facilities. For further information please visit <http://www.osha.gov/dcsp/osp/stateprogs/hawaii.html>.

Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667),

Secretary of Labor's Order No. 1–2012 (76 FR 3912), and 29 CFR part 1902.

Signed in Washington, DC, on September 21, 2017.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2017–20760 Filed 9–27–17; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0062]

Powered Industrial Trucks Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Powered Industrial Trucks Standard. The information collection requirements address truck design, construction and modification, as well as certification of training and evaluation for truck operators.

DATES: Comments must be submitted (postmarked, sent, or received) by November 27, 2017.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0062, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the Agency name and the OSHA

docket number (OSHA–2011–0062) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments, see the “Public Participation” heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible

unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraph (a)(4) of the Powered Industrial Trucks Standard requires employers to obtain the manufacturer's written approval before modifying a truck in a manner that affects its capacity and safe operation; if the manufacturer grants such approval, the employer must revise capacity, operation, and maintenance instruction plates, tags, and decals accordingly. For front-end attachments not installed by the manufacturer, paragraph (a)(5) mandates that employers provide a marker on the trucks that identifies the attachment, as well as the weight of both the truck and the attachment when the attachment is at maximum elevation with a laterally centered load. Paragraph (a)(6) specifies that employers must ensure that the markers required by paragraphs (a)(3) through (a)(5) remain affixed to the trucks and are legible.

Paragraphs (1)(4) and (1)(6) of the Standard contain the paperwork requirements necessary to certify the evaluation and training provided to powered industrial truck operators. Accordingly, these paragraphs specify the following requirements for employers.

- Paragraph (1)(4)(iii)—Evaluate each operator's performance at least once every three years.

- Paragraph (1)(6)—Certify that each operator meets the training and evaluation requirements specified by paragraph (1). This certification must include the operator's name, the training date, the evaluation date, and the identity of the individual(s) who performed the training and evaluation.

Requiring labels (markings) on modified equipment notifies workers of the conditions under which they can safely operate powered industrial trucks, thereby preventing such hazards as fires and explosions caused by poorly designed electrical systems, rollovers/tipovers that result from exceeding a truck's stability characteristics, and falling loads that occur when loads exceed the lifting capacities of attachments. Certification of worker training and evaluation provides a means of informing employers that their workers received the training and demonstrated the performance necessary to operate a truck within its capacity and control limitations. By ensuring that workers operate only trucks that are in proper working order, and do so safely, employers prevent possible severe injury or death of truck operators and other workers who are in the vicinity of the trucks. Finally, these paperwork requirements are the most efficient means for an OSHA

compliance officer to determine that an employer properly notified workers about the design and construction of, and modifications made to, the trucks they are operating, and that an employer provided them with the required training.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply. For example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is proposing to increase the existing burden hour estimate of the collection of information requirements specified by the Standard. In this regard, the Agency is proposing to increase the current burden hour estimate from 888,244 hours to 911,764 hours, a total increase of 23,520 hours. The adjustment increase is due to updated data indicating a growth in the number of powered industrial trucks from 1,179,441 to 1,210,679 and the number of operators from 1,769,162 to 1,816,018.

Upon further analysis, OSHA has determined that these training provisions are not considered to be collections of information under the PRA. In addition, the Agency was able to gather data updating the number of trucks and operators. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Powered Industrial Trucks (29 CFR 1910.178).

OMB Control Number: 1218-0242.

Affected Public: Business or other for-profits.

Number of Respondents: 1,210,679.

Number of Responses: 2,397,144.

Frequency of Responses: On occasion; annually; triennially.

Average Time per Response: Various.

Estimated Total Burden Hours: 427,866.

Estimated Cost (Operation and Maintenance): \$256,626.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other materials must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA-2011-0062). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so that the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506

et seq.) and Secretary of Labor's Order No. 1-2012 (77 FR 3912).

Signed at Washington, DC, on September 19, 2017.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2017-20770 Filed 9-27-17; 8:45 am]

BILLING CODE 4510-26-P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 17-05]

Notice of Entering Into a Compact With the Federal Democratic Republic of Nepal

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (22 U.S.C. 7701-7718), as amended, and the heading "Millennium Challenge Corporation" of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017, the Millennium Challenge Corporation (MCC) is publishing a summary of the Millennium Challenge Compact between the United States of America, acting through MCC, and the Republic of Nepal. Representatives of MCC and Nepal signed the compact on September 14, 2017. The complete text of the compact has been posted at: <https://assets.mcc.gov/content/uploads/compact-nepal.pdf>.

Dated: September 25, 2017.

Jeanne M. Hauch,

Vice President and General Counsel, Millennium Challenge Corporation.

Summary of the Nepal Compact

Overview of MCC Nepal Compact

MCC's Board of Directors has approved a five-year, \$500 million compact with Nepal aimed at reducing poverty through economic growth. The compact seeks to assist Nepal in addressing two binding constraints to economic growth: (i) Inadequate supply of electricity; and (ii) high cost of transportation. The compact will address these binding constraints by investing in two projects: The Electricity Transmission Project and the Road Maintenance Project.

Background and Context

Nepal's economic growth, labor productivity, and gross domestic product per capita are among the lowest

in South Asia. A decade of civil and political unrest from 1996 to 2006 continues to shape the social, economic, and political landscape of the country. The people of Nepal continue to deal with the fallout from a series of devastating earthquakes in 2015 that killed nearly 9,000 people and pushed an additional million below the poverty line. Almost half a million people leave the country each year for economic opportunities elsewhere. In September 2017, Nepal will hold the final phase of a three-phase local, democratic election in hundreds of municipalities throughout the country. These local elections are the first in 20 years and the first to be held since Nepal ratified its constitution in 2015, a critical step in continuing to foster transparency and accountability in government.

The proposed compact is designed to address the underlying causes of two binding constraints to Nepal's growth: Inadequate supply of electricity and high cost of transportation. Nepal suffers from the worst electricity shortages in South Asia, and new investment in Nepal's electricity sector is critical to achieve economic growth. Only half of the demand for electricity can be met by the nation's grid, which has resulted in load-shedding of up to 18 hours a day during the dry winter months when hydropower generation is low. The constraints to growth analysis found that the low availability of electricity creates significant costs for businesses that must run generators on expensive imported fuel. The availability of electricity is further reduced by Nepal's constrained ability

to import power when needed and the high level of losses in transmission and distribution system.

The transportation sector has also suffered from Nepal's past political instability, inadequate investment, weak planning, and poor project execution. These factors have contributed to poor road quality, inefficient customs and border enforcement, an inefficient trucking industry, and inadequate road coverage. The Government of Nepal recognizes that investments in this sector are needed to reduce transportation costs and promote economic growth.

Compact Overview and Budget

After MCC selected Nepal as eligible for threshold program assistance in December 2011, MCC and the Government of Nepal conducted a constraints to growth analysis. When MCC's Board of Directors selected Nepal as eligible to develop a compact in December 2014, MCC and the Government of Nepal used the analysis completed for the threshold program to develop the proposed compact.

MCC and Nepal identified four binding constraints and agreed to focus the proposed compact on the two best suited for MCC's assistance: The inadequate supply of electricity and the high cost of transportation. The proposed compact seeks to address the selected constraints by investing in two projects: the Electricity Transmission Project and the Road Maintenance Project.

Nepal is already undertaking significant investments in the generation and distribution portions of

the power sector value chain. The proposed Electricity Transmission Project therefore seeks to strengthen the transmission portion of the value chain, which has been weakened by historic underinvestment and poor implementation. The Electricity Transmission Project plans to add approximately 300 kilometers to the high-voltage transmission backbone inside Nepal, complete the Nepal portion of the second cross-border transmission line with India for increased electricity trade, and provide technical assistance aimed at improving the sustainability of Nepal's power sector. The compact will also support Nepal's establishment of an independent and capable power sector regulator, which is essential for maintaining open, non-discriminatory access to a transmission network with transparent pricing and clear rules of engagement.

The Road Maintenance Project focuses on improving Nepal's road maintenance regime by providing technical assistance to key actors within the transportation sector. The Road Maintenance Project also includes an incentive-matching fund to encourage the expansion of Nepal's road maintenance budget, in addition to the periodic maintenance of up to 305 kilometers of the country's strategic road network.

The following summary describes the components of Nepal's compact. The MCC investment for the compact is \$500 million, with an additional \$130 million committed by Nepal to support the compact program.

Component	Total (millions \$)
1. Electricity Transmission Project	398.2
1.1 Transmission Lines Activity	228.2
1.2 Substation Activity	114.0
1.3 Power Sector Technical Assistance Activity	22.4
1.4 Project Management Activity	33.6
2. Roads Maintenance Project	52.3
2.1 Technical Assistance Road Maintenance Reform	7.1
2.2 Strategic Road Maintenance Works	45.2
3. Monitoring and Evaluation	9.5
3.1 Monitoring and Evaluation Activities	9.5
4. Program Administration and Oversight	40.0
4.1 MCA-Nepal Program Administration	23.4
4.2 Fiscal Agent, Procurement Agent, Audit	16.6
Total MCC Contribution	500.0
Government of Nepal Contribution	130.0
Total Program Investment	630.0

Nepal Compact Budget

Project Summaries

The Electricity Transmission Project:

The objective of this project is to spur economic activity and growth by improving the availability and reliability of electricity supply in Nepal's power grid, thus increasing per capita electricity consumption. This project includes four activities:

- *Transmission Lines Activity.* This activity will focus on the construction of an estimated 300 kilometers of high voltage transmission lines in Nepal, providing a vital missing link to the existing high voltage grid. Most of the proposed transmission lines traverse mountainous terrain, starting near the Kathmandu Valley, moving to the west and then southwest to the Indian border. The particular lines were selected following careful analyses and feasibility studies that weighed their technical and economic merit, their importance in meeting Nepal's medium and long term electricity supply goals, and their consistency with Nepal's domestic and cross border transmission investment plans. The transmission line route was selected to minimize impact on people and sensitive geographic areas, to the extent possible. Moreover, the activity includes funding for certain community benefit-sharing activities in order to further mitigate potential social impacts from construction of the transmission lines. Potential activities include rural electrification through off-grid solutions and community empowerment programs.

- *Substations Activity.* This activity is complementary to the Transmission Lines Activity. The proposed compact contemplates constructing three substations. In combination with the transmission lines, these substations would help evacuate and transmit power collected from three major river basins where large hydropower projects are under construction by investors, many of which are private. The substation near Butwal would be the starting point for the transmission line to the Indian border and power grid.

- *Power Sector Technical Assistance Activity.* This activity seeks to strengthen the proposed power sector regulator (Electricity Regulatory Commission) to help bring transparency, efficiency, and competition to the power sector. The activity would help Nepal embed experts within the Electricity Regulatory Commission to improve the skills of this nascent agency in areas such as rule-making, dispute resolution, and economic and technical regulation. This activity would also help the Nepal

Electricity Authority improve its transmission operations and prepare for oversight from the new independent electricity regulator. This will help establish a regulatory cost recovery system, improved grid operations, and better power system planning within the Nepal Electricity Authority.

- *Program Management and Technical Oversight Activity.* This activity is designed to complement the Transmission Lines and Substation Activities by supporting project management, environmental and social impact assessment, and engineering and technical supervision. This will allow the compact to properly implement the proposed infrastructure investments while complying with MCC's technical, environmental, and social standards.

The Road Maintenance Project: The objective of this project is to avoid future increases in transportation costs across Nepal's road network by preventing further deterioration of maintained roads and to improve the administration of road maintenance. This project has two activities:

- *Technical Assistance Activity.* This activity is planned to build capacity for the Department of Roads and Roads Board Nepal in (1) improved data collection; (2) preparation of appropriate road maintenance plans and cost estimates; (3) improved prioritization of periodic maintenance; (4) improved contracting and contracting management; and (5) improved project management.

- *Strategic Road Maintenance Works Activity.* This activity seeks to complement and build upon the Technical Assistance Activity by incentivizing additional government spending on road maintenance. The activity would establish a matching fund to provide \$2 for every \$1 Nepal spends above its current average annual amount for road maintenance, up to a total of \$15 million annually for three years. The activity would additionally provide for the physical maintenance of an initial 305 kilometers out of the 2,000 kilometers of Nepal's strategic road network.

Economic Analysis

The proposed Electricity Transmission Project has an estimated economic rate of return of 12 percent. The investment in Nepal's transmission system is expected to affect all grid-connected consumers, which represent 72 percent of Nepali households. With a projected population in 2024 of 31.5 million people, an estimated 23 million individual beneficiaries living in five million households are expected to benefit from this project. Fifty-two

percent of the potential beneficiaries are estimated to be female.

The estimated economic rate of return for the Road Maintenance Project is 29 percent. The 305 kilometers of roads proposed by Nepal for periodic maintenance under the compact are spread across five road segments in five geographic areas. The Project is expected to benefit approximately 924,000 people in 205,000 households.

MCC anticipates that there will be overlap in the beneficiaries of the two proposed projects and thus ultimately expects the compact to benefit approximately 23 million individuals.

Policy Reforms and the Compact

MCC will require certain conditions to entry into force of the compact in order to ensure sustainability of compact investments. For example, given the proposed compact's focus and the clear need for a second cross-border transmission connection with India, MCC will require that technical and financial arrangements for the construction of the complementary investment in India be finalized before entry into force of the compact. This requirement is expected to be further strengthened through conditions regarding the Nepal portion of the cross-border transmission line that must be met for certain compact disbursements.

The proposed compact includes several key reform elements, supported by technical assistance activities in each project. The Power Sector Technical Assistance Activity includes conditions to help Nepal create a transparent and efficient electricity market. MCC believes that the establishment of the Electricity Regulatory Commission as an independent and capable regulator is essential for maintaining open, non-discriminatory access to a transmission network with transparent pricing and clear rules of engagement for all power market participants, particularly investors in generation projects. The compact proposes to increase the utility's planning, operations, and cost recovery mechanisms to help ensure the sustainability of the proposed investments. Strengthening the utility's transmission operations should ensure its viability if Nepal decides to spin off or merge those operations with an independent transmission company. MCC has conditioned the entry into force of the compact on satisfactory progress toward parliamentary approval of a bill to establish the Electricity Regulatory Commission. Further, funding for the Power Sector Technical Assistance Activity will only be provided if the Electricity Regulatory

Commission bill has been passed by the Nepali parliament.

For the Technical Assistance Activity in the Road Maintenance Project, MCC will provide compact funding for maintenance works only if Nepal increases its own historically low spending levels on road maintenance. The compact is expected to incentivize Nepal to increase its spending for road maintenance significantly by making MCC funding conditioned on increased Nepal spending.

[FR Doc. 2017-20847 Filed 9-26-17; 11:15 am]

BILLING CODE 9211-03-P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 17-07]

Millennium Challenge Corporation Advisory Council

AGENCY: Millennium Challenge Corporation.

ACTION: Notice of open meeting.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C.—App., the Millennium Challenge Corporation (MCC) Advisory Council was established as a discretionary advisory committee on June 14, 2016. The MCC Advisory Council contributes to MCC's mission to reduce poverty through economic growth. The functions of the MCC Advisory Council are to exclusively serve MCC in an advisory capacity and provide insight regarding innovations in infrastructure, technology and sustainability, perceived risks and opportunities in MCC partner countries, new financing mechanisms for developing country contexts, and shared value approaches. The MCC Advisory Council provides a platform for systematic engagement with the private sector and other external stakeholders.

DATES: The meeting will be held October 17, 2017, from 9 a.m.–1:45 p.m. EST.

ADDRESSES: The meeting will be held at the Millennium Challenge Corporation 1099 14th St. NW., Suite 700 Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: For further information, contact Beth Roberts at MCCAdvisoryCouncil@mcc.gov or 202-521-3600 or visit <https://www.mcc.gov/about/org-unit/advisory-council>.

SUPPLEMENTARY INFORMATION:

Time and Place: Tuesday, October 17, 2017, from 9:00 a.m.–1:45 p.m. EST which includes a working lunch. The

meeting will be held at the Millennium Challenge Corporation 1099 14th St. NW., Suite 700, Washington, DC 20005.

Agenda: During the fall 2017 meeting of the MCC Advisory Council, members will discuss ways MCC can continue to bolster its relationship with the private sector and provide advice on MCC's investments in the Northern Triangle and ongoing compact development in Tunisia.

Public Participation: The meeting will be open to the public. Members of the public may file written statement(s) before or after the meeting. If you plan to attend, please submit your name and affiliation no later than Monday, October 9, to MCCAdvisoryCouncil@mcc.gov to be placed on an attendee list.

Jeanne M. Hauch,

VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

[FR Doc. 2017-20849 Filed 9-26-17; 11:15 am]

BILLING CODE 9211-03-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (17-069)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments regarding the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 7th Street NW., Washington, DC 20543. Attention: Desk Officer for NASA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF0000, Washington, DC 20546 or email Lori.Parker-1@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information submitted by recipients is an annual report of Government-owned property in the possession of educational or nonprofit institutions holding NASA grants. In addition to the annual report, a property report may also be required at the end of the grant, or on the occurrence of certain events. The collected information is used by NASA to effectively maintain an appropriate internal control system for equipment and property provided or acquired under grants and cooperative agreements with institutions of higher education and other nonprofit organizations, and to comply with statutory requirements.

II. Method of Collection

NASA is participating in Federal efforts to extend the use of information technology to more Government processes via Internet. NASA encourages recipients to use the latest computer technology in preparing documentation. Grant and Cooperative Agreement awardees submit annual property reports via an automated NASA Form 1018 by way of the NASA Electronic Submission System (NESS). Approximately 95% of reports are submitted via electronic means.

III. Data

Title: Property Inventory Report—Grants with Educational and Nonprofit Entities (formerly titled NASA Inventory Report: Property Management & Control, Grants).

OMB Number: 2700-0047.

Type of Review: Extension of a currently approved collection.

Affected Public: Educational institutions and not-for-profit institutions.

Estimated Number of Respondents: 238.

Estimated Time per Response: 8.33 hours.

Estimated Total Annual Burden Hours: 1,983 hours.

Estimated Total Annual Cost: \$67,552.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the

burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2017-20773 Filed 9-27-17; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Engineering (#1170)

Date and Time:

October 24, 2017: 12:15 p.m. to 5:30 p.m.

October 25, 2017: 8:30 a.m. to 1:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Room E 2020, Alexandria, Virginia 22314.

Type of Meeting: Open.

Contact Person: Evette Rollins, National Science Foundation, 2415 Eisenhower Avenue, Suite C, 14000, Alexandria, Virginia 22314; 703-292-8300.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda

Tuesday, October 24, 2017

- Directorate for Engineering Report
- NSF Budget Update
- Reports from Advisory Committee Liaisons
- Intelligent Cognitive Assistants
- Break-out Session: Intelligent Cognitive Assistants
- Reporting and Discussion: Breakout Sessions

Wednesday, October 25, 2017

- Fostering Convergent Research to Address Grand Challenges
- Future of Multidisciplinary Engineering Research Centers
- Perspective from the Director's Office
- Breakout Sessions: Future of Multidisciplinary Engineering Research Centers

- Reporting and Discussion: Breakout Sessions
- Roundtable on Strategic Recommendations for ENG

Dated: September 25, 2017.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2017-20775 Filed 9-27-17; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on Strategy (CS), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Wednesday, October 4, 2017 from 4:00-4:30 p.m. EDT.

SUBJECT MATTER: Discussion of potential Committee on Strategy activities through May 2018; and discussion of November 2017 NSB meeting agenda items.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link by sending an email to nationalsciencebrd@nsf.gov at least 24 hours prior to the teleconference.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site www.nsf.gov/nsb for additional information or updates. Point of contact for this meeting is: Kathy Jacquart, 2415 Eisenhower Ave., Alexandria, VA 22314. Telephone: (703) 292-7000.

Chris Blair,

Executive Assistant to the NSB Office.

[FR Doc. 2017-20973 Filed 9-26-17; 4:15 pm]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-336; NRC-2017-0197]

Dominion Nuclear Connecticut, Inc.; Millstone Power Station, Unit No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) regarding the request for regulatory exemption from specific requirements that would allow the use of operator manual actions related to loss of instrument air regarding Renewed Facility Operating License No. DPR-65 held by Dominion Nuclear Connecticut, Inc. (Dominion, the licensee) for the operation of Millstone Power Station, Unit No. 2 (Millstone 2).

DATES: The EA and FONSI referenced in this document is available on September 28, 2017.

ADDRESSES: Please refer to Docket ID NRC-2017-0197 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-2017-0197. 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. For the convenience of the reader, the ADAMS accession number for each document referenced in this document (if it is available in ADAMS) is provided in a table in the "Availability of Documents" section.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room 01-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Richard Guzman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1030; email: Richard.Guzman@nrc.gov.

SUPPLEMENTARY INFORMATION:**I. Introduction**

The NRC is considering issuance of an exemption from certain requirements from section III.G.2 of appendix R to part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), “Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,” for Renewed Facility Operating License No. DPR-65 issued to the licensee for operation of Millstone 2, located in New London County, Connecticut.

In accordance with 10 CFR 51.21, the NRC has prepared an EA that analyzes the environmental effects of the proposed regulatory exemption. Based on the results of the EA, and in accordance with 10 CFR 51.32, the NRC has prepared a FONSI for the proposed action.

II. Environmental Assessment*Description of the Proposed Action*

In its application dated October 28, 2016, the licensee requested an exemption from certain requirements pertaining to NRC fire regulations contained in appendix R to 10 CFR part 50. The proposed action would exempt Millstone 2 from these requirements and allow the licensee to use alternate methods than those specified in appendix R to 10 CFR part 50 to achieve and maintain hot shutdown conditions for affected initiating fire areas with consideration of a loss of instrument air. Specifically, the proposed action would allow the licensee to use operator manual actions (OMAs) related to loss of instrument air at Millstone 2 in lieu of the requirements contained in section III.G.2 of appendix R to 10 CFR part 50.

Need for the Proposed Action

A regulatory exemption to section III.G.2 of appendix R to 10 CFR part 50 is needed to allow Millstone 2 to use alternate methods than those specified in appendix R to 10 CFR part 50 to achieve and maintain hot shutdown conditions for affected initiating fire areas with consideration of a loss of instrument air.

Regulatory Issue Summary 2006–10, “Regulatory Expectations with Appendix R, Section III.G.2, Operator Manual Actions,” documents the NRC position on the use of OMAs as part of a compliance strategy to meet the requirements of section III.G.2 of appendix R. The NRC requires plants which credit manual actions for regulatory compliance with section III.G.2 of appendix R to obtain NRC approval for those actions in accordance with the requirements of 10 CFR part 50.12, “Specific Exemptions.”

The licensee originally submitted an exemption request for OMAs contained in the Millstone 2 Appendix R Compliance Report in its letter dated June 30, 2011. The licensee subsequently removed four OMAs from that exemption request related to specific fire areas by letter dated February 29, 2012, because loss of instrument air was not a postulated event. The NRC approved the requested exemption, as revised, by letter dated December 18, 2012.

During the 2016 triennial fire inspection at Millstone 2, it was identified that a loss of offsite power will result in a loss of instrument air prior to the emergency diesel generators starting and that instrument air does not automatically restart and cannot be manually started from the control room. The intent of 10 CFR part 50, appendix R, section III.G.2, is to ensure one train of systems necessary to achieve and maintain hot shutdown will remain available in the event of a fire. At Millstone 2, instrument air is a single train system and, therefore, does not meet appendix R, section III.G.2 requirements because there is no redundant train. A loss of instrument air will result in both atmospheric dump valves (ADV) failing closed. Instrument air is necessary to operate the ADVs and support decay heat removal. The four OMAs (OMAs 1, 9, 10, and 11) subject to this exemption request provide assurance for the use of alternate methods than those specified in appendix R to 10 CFR part 50 to achieve and maintain hot shutdown conditions for affected initiating fire areas with consideration of a loss of instrument air. As a result, the licensee is submitting this exemption request for those OMAs (OMAs 1, 9, 10, and 11) related to a loss of instrument air for certain affected initiating fire areas (R-9, R-10, R-13, and R-14).

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action. The proposed action consists of the NRC granting Millstone 2 a regulatory exemption for the use of alternate methods than those specified in appendix R to 10 CFR part 50 to achieve and maintain hot shutdown conditions for affected initiating fire areas with consideration of a loss of instrument air. Specifically, the regulatory exemption is necessary to allow the use of OMAs related to loss of instrument air in lieu of the requirements contained in section III.G.2 of appendix R to 10 CFR part 50.

The proposed changes would have no direct impacts on land use or water

resources, including terrestrial and aquatic biota as the proposed action involves no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of non-radiological effluents. No changes to the plant’s National Pollutant Discharge Elimination System permit are needed. No changes in ambient air quality would be expected. In addition, there would be no noticeable effect on socioeconomic conditions in the region, no environment justice impacts, and no impacts to historic and cultural resources. Therefore, there would be no significant non-radiological impacts associated with the proposed action.

The NRC has concluded that the proposed action would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring. There would be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. No changes would be made to plant buildings or the site property. Therefore, the proposed action would not result in a change to the radiation exposures to the public or radiation exposure to plant workers.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC considered denial of the proposed action (*i.e.*, the “no-action” alternative). Denial of the regulatory exemptions would result in no change in current environmental impacts. Therefore, the environmental impacts of the proposed action and the denial of the exemption request would be similar.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

In accordance with its stated policy, on July 31, 2017, the NRC staff consulted with the Connecticut State official, Mr. Jeffrey Semancik of the Department of Energy and Environmental Protection, regarding the environmental impact of the proposed action. The state official had no comments.

III. Finding of No Significant Impact

The licensee has requested an exemption from specific regulatory requirements to allow the use of OMAs

as alternate methods than those specified in section III.G.2 of appendix R of 10 CFR part 50 to achieve and maintain hot shutdown conditions for affected initiating fire areas with consideration of a loss of instrument air. The NRC is considering issuing the requested exemption. The proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological and non-radiological impacts. This FONSI incorporates by reference the EA in Section II of this notice. Therefore, the NRC concludes that the proposed action will not have

a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

The related environmental document is the “Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Millstone Power Station, Units 2 and 3—Final Report,” NUREG–1437, Supplement 22. NUREG–1437, Supplement 22 provides the latest environmental review of current operations and description of environmental conditions at Millstone 2.

The finding and other related environmental documents may be

examined, and/or copied for a fee, at the NRC’s Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Publicly-available records will be accessible electronically from ADAMS Public Electronic Reading Room on the Internet at the NRC’s Web site: <http://www.nrc.gov/reading-rm/adams.html>.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No./ Web link/ Federal Register Citation
Dominion Nuclear Connecticut, Inc., Millstone Power Station, Unit 2, Proposed Exemption Request from 10 CFR 50, Appendix R, Section III.G, “Fire Protection of Safe Shutdown Capability.” Dated October 28, 2016.	ML16305A330
Dominion Nuclear Connecticut, Inc., Millstone, Unit 2—Request for Exemption from 10 CFR 50, Appendix R, Section III.G, “Fire Protection of Safe Shutdown Capability.” Dated June 30, 2011.	ML11188A213
Dominion Nuclear Connecticut, Inc., Millstone Power Station, Unit 2—Response to Request for Additional Information Request for Exemption from 10 CFR 50, Appendix R, Section III.G, “Fire Protection of Safe Shutdown Capability.” Dated February 29, 2012.	ML12069A016
U.S. Nuclear Regulatory Commission, Millstone Power Station, Unit 2, Correction to Previously Issued Exemption from the Requirements of 10 CFR Part 50, Appendix R, Section III.G.2. (TAC No. ME6693). Dated December 18, 2012.	ML12312A373
U.S. Nuclear Regulatory Commission, NRC Regulatory Issue Summary 2006–010—Regulatory Expectations with Appendix R Paragraph III.G.2 Operator Manual Actions. Dated June 30, 2006.	ML061650389
U.S. Nuclear Regulatory Commission, NUREG–1437, Supplement 22, Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Millstone Power Station, Units 2 and 3, Final Report Dated July, 2005.	ML051960295

Dated at Rockville, Maryland, this 20th day of September 2017.

For the Nuclear Regulatory Commission.

Richard V. Guzman,
Senior Project Manager, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–20726 Filed 9–27–17; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Privacy Act of 1974; New Blanket Routine Use

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of New Blanket Routine Use.

SUMMARY: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, as amended, the Occupational Safety and Health Review Commission (OSHRC) is proposing in this notice the addition of a new blanket routine use. OSHRC’s Privacy Act system-of-records notices are published at 71 FR 19556, 19556–67

(Apr. 14, 2006), 72 FR 54301, 54301–03 (Sept. 24, 2007), and 81 FR 44335, 44335–37 (July 7, 2016), with additional blanket routine uses published at 73 FR 45256, 45256–57 (Aug. 4, 2008), and 80 FR 60182, 60182 (Oct. 5, 2015).

DATES: Comments must be received by OSHRC on or before October 30, 2017. The new blanket routine use will become effective on that date, without any further notice in the **Federal Register**, unless comments or government approval procedures necessitate otherwise.

ADDRESSES: You may submit comments by any of the following methods:

- *Email:* rbailey@oshrc.gov. Include “PRIVACY ACT BLANKET ROUTINE USE” in the subject line of the message.
- *Fax:* (202) 606–5417.
- *Mail:* One Lafayette Centre, 1120 20th Street NW., Ninth Floor, Washington, DC 20036–3457.
- *Hand Delivery/Courier:* Same as mailing address.

Instructions: All submissions must include your name, return address and email address, if applicable. Please clearly label submissions as “PRIVACY ACT BLANKET ROUTINE USE.”

FOR FURTHER INFORMATION CONTACT: Ron Bailey, Attorney-Advisor, Office of the General Counsel, via telephone at (202) 606–5410, or via email at rbailey@oshrc.gov.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, 5 U.S.C. 552a(e)(4) and (11), requires OSHRC to publish in the **Federal Register** notice of any new routine use of an OSHRC system of records, and to provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

On January 3, 2017, the Office of Management and Budget (OMB) issued *Preparing for and Responding to a Breach of Personally Identifiable Information*, OMB Memorandum 17–12, to the heads of all executive departments and agencies. Among other things, this memorandum requires the addition of a routine use to ensure that agencies, such as OSHRC, are able to disclose records in their systems of records that may reasonably be needed by another agency in responding to a breach. OSHRC is therefore proposing the addition of a new blanket routine use that conforms to the language required by OMB.

OSHR's proposed blanket routine use is published below. Twelve other blanket routine uses, which remain in effect, were last published at 71 FR 19556, 19558–59 (Apr. 14, 2006), 73 FR 45256, 45256–57 (Aug. 4, 2008), and 80 FR 60182, 60182 (Oct. 5, 2015).

Blanket Routine Uses

(13) A record from an OSHRC system of records may be disclosed as a blanket routine use to another Federal agency or Federal entity, when OSHRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

Date: September 21, 2017.

Nadine N. Mancini,

General Counsel, Senior Agency Official for Privacy.

[FR Doc. 2017–20755 Filed 9–27–17; 8:45 am]

BILLING CODE 7600–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Verification of Adult Student Enrollment Status, RI 25–49

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR), Verification of Adult Student Enrollment Status, RI 25–49.

DATES: Comments are encouraged and will be accepted until October 30, 2017.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable

supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to Cyrus.Benson@opm.gov or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0215) was previously published in the **Federal Register** on May 5, 2017, at 82 FR 21277, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Form RI 25–49 is used to verify that adult student annuitants are entitled to payment. The Office of Personnel Management must confirm that a full-time enrollment has been maintained.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Verification of Full-Time School Attendance.

OMB Number: 3206–0215.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 10,000.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 10,000 hours.

U.S. Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2017–20854 Filed 9–27–17; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81683; File No. SR–CHX–2017–12]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving a Proposed Rule Change Regarding Qualified Contingent Trades and Related Information Recording Obligations by Certain Participants

September 22, 2017.

I. Introduction

On July 26, 2017, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b–4 thereunder,³ a proposed rule change regarding Qualified Contingent Trades (“QCT(s)”) and related recordkeeping obligations for certain Exchange participants. The proposed rule change was published for comment in the **Federal Register** on August 10, 2017.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange permits its participants to submit to the Exchange cross orders marked with a QCT modifier (sometimes referred to as “QCT crosses”) to effect transactions that comprise the NMS stock component of a QCT.⁵ QCT crosses are submitted to

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ See Securities Exchange Act Release No. 81315 (August 4, 2017), 82 FR 37479 (“Notice”).

⁵ See *id.* at 37480. A QCT is “a transaction consisting of two or more component orders, executed as agent or principal where: (1) At least one component order is in an NMS stock; (2) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (3) the execution of one component is contingent upon the execution of all other components at or near the same time; (4) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined at the time the contingent order is placed; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge

Continued

the Exchange consistent with an exemption from Rule 611(a) of Regulation NMS⁶ that the Commission granted in 2006 and modified in 2008 (the “QCT Exemption”).⁷ As described below, the Exchange proposes to amend its rules relating to QCTs to permit only Institutional Brokers (“IB(s)”) to effect such transactions on the Exchange, to impose additional recordkeeping requirements relating to such transactions, and to make additional, clarifying changes to its rules.

A. QCT Crosses May Only Be Submitted by IBs

The Exchange proposes to amend Article 1, Rule 2(b)(2)(E) to provide that QCT crosses may be submitted to the Exchange only by registered IBs.⁹ Article 1, Rule 2(b)(2) sets forth the order execution modifiers that may be attributed to cross orders, and Article 1, Rule 2(b)(2)(E) defines the QCT cross order modifier.¹⁰ Under the proposal, this definition would be amended to state that only IBs may utilize the QCT cross order modifier.¹¹ The Exchange notes that, currently, CHX rules permit any Exchange participant to submit QCT crosses, but in practice non-IB participants do not submit them.¹² The Exchange also notes that its rules currently require only IBs to input all orders and related information into Brokerplex—an automated Exchange order and trade management system—and that this requirement facilitates the Exchange’s ability to gather information it considers to be crucial to its review

that have been announced or since cancelled; and (6) the transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade. *See id.* at 37480; *see also* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (“2008 QCT Exemptive Order”).

⁶ 17 CFR 242.611(a).

⁷ *See* Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006); *see also* 2008 QCT Exemptive Order, *supra* note 5.

⁸ Article 1, Rule 1(n) defines an IB as a member of the Exchange that is registered as an IB pursuant to Article 17 of the Exchange’s rules and has satisfied all Exchange requirements to operate as an IB. For the sake of clarity, the Commission notes that, unless otherwise specified, references herein to “Article” and “Rule” are references to the Exchange’s rules.

⁹ *See* proposed Article 1, Rule 2(b)(2)(E).

¹⁰ *See* Article 1, Rule 2(b)(2).

¹¹ *See* proposed Article 1, Rule 2(b)(2)(E). The Exchange also proposes to add the acronym “QCT” to Article 1, Rule 2(b)(2)(E) to make clear that the acronym refers to “Qualified Contingent Trade.” *See id.*; *see also* Notice, *supra* note 4, at 37481 n.25.

¹² *See* Notice, *supra* note 4, at 37480 n.12 and 37481.

of QCT crosses executed on the Exchange.¹³

B. Recordkeeping Requirements for Away Component Trades of QCT Crosses

The CHX Broker Back Office System (“BBOS”) is an Exchange-maintained trade management system that, among other things, enables the Exchange to review information to identify the specific component transactions on away exchanges that are being used to hedge QCT crosses executed on the Exchange.¹⁴ Currently, the Exchange encourages, but does not require, IBs to input into BBOS certain information for away QCT component orders and trades related to QCT crosses executed on the Exchange.¹⁵ Moreover, Article 11, Rule 3(a)(1)–(3), which sets forth recordkeeping obligations for certain Exchange participants, including IBs, does not currently impose recordkeeping obligations on Exchange participants regarding such away component orders and trades of QCT crosses.¹⁶

The Exchange has proposed several interrelated amendments to Article 11, Rule 3 to require IBs to maintain their own records of, and record with the Exchange, certain information regarding away QCT component orders and trades. Specifically, the Exchange proposes to adopt new Rule 3(a)(4), which would make subject to the Rule 3(a) recordkeeping requirements every component order and trade, whether handled by the Exchange participant or not, related to a cross order marked QCT that is submitted by the Exchange participant and executed within the Exchange matching system.¹⁷

Relatedly, the Exchange proposes to modify Rule 3(b) to include a cross reference to proposed Rule 3(a)(4), and would thereby require that, subject to exceptions set out in interpretations to Rule 3, IBs accurately record in an electronic system designated by the Exchange certain details regarding the away component orders and executions

¹³ *See id.* at 37480–81; *see also* Article 17, Rules 3 and 5 (describing, among other things, Brokerplex and certain IB obligations).

¹⁴ *See* Notice, *supra* note 4, at 37480. The Exchange notes that, currently, the vast majority of such component transactions involve exchange-traded options. *See* Notice, *supra* note 4, at 37480 n.17.

¹⁵ *See id.* at 37482.

¹⁶ *See id.*

¹⁷ *See* proposed Article 11, Rule 3(a)(4). Article 11, Rule 3(a) requires covered Exchange participants to preserve a record, meeting the criteria of paragraph (b), of the information enumerated in Rule 3(a) for at least three years (or any longer period of time required by SEC Rule 17a–4).

identified in proposed Rule 3(a)(4).¹⁸ The Exchange proposes to set forth these details in new Rule 3(b)(27), which would provide that, with respect to any cross order marked QCT that is submitted by the Exchange participant and executed within the Exchange matching system, the date and time of receipt by the Exchange participant of the corresponding order from its customer and all information specified by the Exchange regarding any related component orders and trades executed within the matching system or away shall be entered into BBOS (as applicable), in a manner prescribed by the Exchange.¹⁹

In addition, the Exchange has proposed amendments to Article 17 that dovetail with its proposed changes to Article 11, Rule 3. The Exchange proposes to amend Article 17, Rule 3(a) to state that an IB must enter all orders it receives for execution and any other information required under Article 11 into an automated system approved by the Exchange.²⁰ The Exchange states that this proposed change is necessary to broaden the scope of Article 17, Rule 3(a) beyond just orders received by the IB for execution to reflect that proposed Article 11, Rule 3(b)(27) may require the recording of information related to orders that the IB did not actually receive or otherwise handle.²¹

The Exchange also proposes to adopt new Article 17, Rule 7, which would codify the BBOS into the Exchange’s rules.²² Specifically, proposed Rule 7(a) would state that the BBOS is a trade management system developed and maintained by the Exchange that permits IBs to input certain information and to generate reports therefrom, and that it also is an automated system approved by the Exchange for the purposes of amended Article 17, Rule 3(a).²³ Proposed Rule 7(b) would state

¹⁸ *See* proposed Article 11, Rule 3(b). The Exchange also proposes to add the word “accurately” to the Rule 3(b) text so that the rule requires covered participants to *accurately* record the specified information in the designated Exchange system(s). *See id.*

¹⁹ *See* proposed Article 11, Rule 3(b)(27); *see also* proposed Article 17, Rule 7(c) (specifying the information regarding related component orders and trades to be entered into the BBOS). The Exchange also proposes to relocate the current rule text in Article 11, Rule 3(b)(27) to proposed Article 11, Rule 3(b)(28). Correspondingly, the Exchange proposes to amend the cross references in Interpretations and Policies paragraph .06 of Article 11, Rule 3 to reflect this relocation.

²⁰ The Exchange also proposes to amend the title of Rule 3(a) to reflect that it requires the entry of orders and related information into an automated system. *See* proposed Article 17, Rule 3(a); *see also* Notice, *supra* note 4, at 37482.

²¹ *See* Notice, *supra* note 4, at 37482.

²² *See* proposed Article 17, Rule 7.

²³ *See* proposed Article 17, Rule 7(a).

that users of the BBOS are responsible for entering all transactional, order and other information into the system as required by CHX Rules, in an accurate, timely and complete manner; the Exchange, as the operator of BBOS, retains information entered into BBOS on behalf of the user in conformity with applicable rules and regulations; and the Exchange will provide such information to IBs in a format designated by the Exchange to assist IBs in conducting research regarding their own trading activities, responding to requests for information from customers, regulatory authorities or by process of law, and for other legitimate business purposes.²⁴ Further, proposed Rule 7(b) would state that the Exchange charges IBs the fees specified in its published Schedule of Fees and Assessments for the collection and retrieval of such information.²⁵ Proposed Rule 7(c) would list the specific information regarding component orders and trades related to QCT crosses that IBs are required to enter into the BBOS, as applicable. Specifically, proposed Rule 7(c) would provide that for all orders and trades described under amended Article 11, Rule 3(b)(27), IBs must record the following information into the BBOS, as applicable: (1) QCT Type; (2) Related Exchange; (3) Print Time; (4) Expiration Year; (5) Expiration Month; (6) Price; (7) Contracts; (8) Strike Price; (9) Call/Put; (10) Volume; and (11) Short Sale Indicator.²⁶

C. Proposed Clarification Regarding IB Trading Accounts

Currently, Article 17, Rule 3(c) provides that each IB must maintain separate accounts for handling agency transactions, principal transactions, and transactions involving errors, and must enter transactions into the appropriate accounts.²⁷ The Exchange states it is proposing to amend this rule to clarify that the required accounts relate to special recordkeeping accounts that must be maintained at the Exchange, which, the Exchange represents, is necessary for the Exchange to adequately surveil and examine the

relevant IB trading activity, as well as to provide additional detail as to the types of transactions that must be recorded in the respective accounts.²⁸ Accordingly, the Exchange has proposed to amend Article 17, Rule 3(c) to state that each IB must establish and maintain separate CHX recordkeeping accounts at the Exchange for the sole purpose of recording the following activity: (1) An agency recordkeeping account for agency transactions; (2) a principal recordkeeping account for principal and riskless principal transactions; and (3) an error recordkeeping account for transactions involving only bona fide errors.²⁹ The proposed rule also would state that an IB must record each above-mentioned transaction into the appropriate CHX recordkeeping account.³⁰

D. Additional Proposed Rule Clarifications—Article 11, Rule 3

The Exchange proposes various clarifying amendments to Article 11, Rule 3 regarding certain recordkeeping requirements concerning orders and executions by certain types of Exchange participants, including, but not limited to, IBs.³¹ Specifically, the Exchange proposes to amend Article 11, Rule 3(a) to state that the provisions of Rule 3 only apply to the Exchange participants described in paragraph (e) of the rule—namely, registered IBs and registered market makers, as well as any Exchange participant for which the Exchange is the Designated Examining Authority.³² The Exchange also proposes to amend paragraph (e) to state that any other Exchange participant also is required to maintain the information specified in Rule 3 to the extent such information is required to be maintained pursuant to the Exchange Act and the rules thereunder or, as previously set forth in the pre-existing version of paragraph (e), pursuant to the rules of the other self-regulatory organizations of which they are members.³³

In addition, the Exchange proposes to clarify that proprietary orders fall under the purview of Article 11, Rule 3.³⁴ To accomplish this, the Exchange proposes

to delete from paragraph .01 under the Interpretations and Policies of Article 11, Rule 3 the sentence stating that a decision by a participant to buy or sell securities for his or her own account on the Exchange shall not constitute an order for which a record must be made under the rule.³⁵ The Exchange notes that that sentence excluded from the scope of Article 11, Rule 3(a) the decision to purchase or sell a security on a proprietary basis, and not the proprietary order itself.³⁶ The Exchange states, however, that it believes the sentence could be misconstrued to exclude all proprietary orders from the scope of Article 11, Rule 3.³⁷ The Exchange also believes that current Article 11, Rule 3(a)(1)–(3) adequately describes the types of orders subject to current Article 11, Rule 3.³⁸

Further, the Exchange proposes to amend paragraph .03 under the Interpretations and Policies of Article 11, Rule 3. Currently, paragraph .03 states that the rule shall not apply to orders sent or received through the matching system or through any other electronic system that the Exchange expressly recognizes as providing the required information in a format acceptable to the Exchange. The Exchange states that it believes the current provision could be misconstrued to exclude such orders from the scope of Article 11, Rule 3, which is not the Exchange's intent.³⁹ Accordingly, the Exchange proposes to amend paragraph .03 to state that a participant that sends or receives orders, cancellations and executions through the matching system or through any other electronic system that the Exchange expressly recognizes as providing the required information in a format acceptable to the Exchange is not required to maintain separate records of such orders, cancellations and executions.⁴⁰

E. Additional Proposed Rule Clarifications—Cross Orders

The Exchange has also proposed to adopt amendments to clarify its rules regarding the operation of cross orders and Cross With Size handling and to eliminate redundant language in those

²⁴ See proposed Article 17, Rule 7(b).

²⁵ See *id.* The Exchange states that it is not proposing to assess a fee for use of the BBOS in addition to the current fees related to costs incurred by the Exchange in creating any requested reports, which shall be rebilled to Exchange participants at cost. See Notice, *supra* note 4, at 37482 n.38.

²⁶ See proposed Article 17, Rule 7(c). The Exchange notes that this required information would be identical to the current data fields available in the BBOS. See Notice, *supra* note 4, at 37482 n.37.

²⁷ See Article 17, Rule 3(c); see also Notice, *supra* note 4, at 37482.

²⁸ See Notice, *supra* note 4, at 37482.

²⁹ See proposed Article 17, Rule 3(c).

³⁰ See *id.*

³¹ The Exchange also proposes to add the phrase “by Certain Participants” to the title of the rule so that it reads “Records of Orders and Executions by Certain Participants.” See proposed Article 11, Rule 3. The Exchange states that this change is meant to better distinguish Article 11, Rule 3 from Article 11, Rule 2, which requires all Exchange participants to comply with the requirements of SEC Rules 17a-3 and 17a-4. See Notice, *supra* note 4, at 37481.

³² See proposed Article 11, Rule 3(a).

³³ See proposed Article 11, Rule 3(e).

³⁴ See Notice, *supra* note 4, at 37481.

³⁵ See proposed Interpretation and Policy .01 to Article 11, Rule 3.

³⁶ See Notice, *supra* note 4, at 37481.

³⁷ See *id.*

³⁸ See *id.*

³⁹ See *id.* The Exchange also notes that the amendments would have no impact on a Participant's recordkeeping obligations under Article 11, Rule 2, which requires, among other things, that Participants comply with the recordkeeping requirements of SEC Rule 17a-3. See *id.* at 37481–82, n.33.

⁴⁰ See *id.*

rules.⁴¹ Specifically, the Exchange proposes to amend the definition of “cross order” to state that a cross order may only execute within the Exchange’s matching system if it is priced better than the working price, as defined under Article 1, Rule 1(pp), of all resting orders on the CHX Book.⁴² The Exchange notes that the amended definition is intended to clarify that while the pricing requirement is a prerequisite for executing a cross order within the matching system, a cross order that does not meet the pricing requirement is still by definition a cross order for purposes of the Exchange’s rules.⁴³ The Exchange also proposes to amend Article 1, Rule 2(g)(1), which defines and sets forth special order handling requirements for Cross With Size orders, to state that a cross order that meets the Cross With Size definition will execute if there are no resting orders on the CHX Book with a working price better than the cross order.⁴⁴ In addition, the Exchange has proposed to amend Article 20, Rule 8(e)(1), which specifies how certain order types will be executed in the matching system, to remove references to Cross With Size and to state that cross orders are to be handled pursuant to Article 1, Rule 2(a)(2) and Rule 2(g)(1).⁴⁵ The Exchange states it is proposing to remove references to Cross With Size from Article 20, Rule 8(e)(1) because Cross With Size is a special handling for cross orders, and not itself an order type or order modifier.⁴⁶

F. Operative Date

The Exchange has proposed to provide notice to its participants of the operative date of the proposed change in the event that the proposed rule change is approved by the Commission.⁴⁷

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act⁴⁸ and the rules and

regulations thereunder applicable to the Exchange.⁴⁹ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,⁵⁰ which requires that an exchange be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange; and Section 6(b)(5) of the Act,⁵¹ which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the Exchange’s proposal to permit only registered IBs to submit QCT crosses to the Exchange is consistent with the Act. The Exchange has noted that, currently, while other types of Exchange participants are permitted to submit QCT crosses, only IBs do so in practice.⁵² As such, the Commission believes that this aspect of the proposal is designed to codify existing practice with respect to QCT crosses and not designed to alter the status quo with respect to the type of Exchange participant that submits them to the Exchange. In addition, the Exchange has represented that any Exchange participant that has satisfied the applicable requirements may register as an IB.⁵³ Further, the Exchange has noted that IBs have experience in ensuring that QCT crosses are submitted to the Exchange matching system in a manner consistent with Exchange rules and the QCT Exemption, the Exchange’s surveillance and examination program is optimized with respect to the submission of QCT crosses by IBs in particular, and the Exchange believes that the most effective way for it to surveil QCT cross activity for compliance with Exchange rules and the QCT Exemption is to limit the submission of QCTs to IBs.⁵⁴

Accordingly, the Commission believes that the Exchange’s proposal to amend Article 1, Rule 2(b)(2)(E) to reflect current practice on the Exchange and permit only IBs to submit QCT crosses is consistent with Section 6(b)(5) of the Act in that it is reasonably designed to help prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest, and is not designed to permit unfair discrimination. The Commission also notes in this regard that it received no comments on the proposal.

In addition, the Commission believes that the Exchange’s proposed rule amendments to require IBs to maintain records of, and record with the Exchange, appropriate information regarding QCT cross transactions, and in particular the away component orders and trades of such transactions, are consistent with the Act. As the Exchange noted, currently, its recordkeeping rules do not require the recording of information regarding the away component orders and trades related to QCT crosses submitted to the Exchange, and IBs instead are encouraged, but not required, to enter such information into the BBOS.⁵⁵ In addition, the BBOS currently is not described in the Exchange’s rules. The Commission believes that the Exchange’s proposal to require reporting of relevant information regarding away component orders and trades related to QCT crosses and subject that information to the Exchange’s recordkeeping requirements in Article 11, Rule 3 and Article 17, Rule 3, as well as the Exchange’s proposal to codify the BBOS in Article 17, Rule 7, will strengthen the Exchange’s recordkeeping requirements with respect to QCT crosses and should enhance the Exchange’s ability to monitor for compliance with relevant Exchange rules and the QCT Exemption.⁵⁶ Moreover, the Commission does not believe that these additional recordkeeping obligations would be unduly burdensome to IBs, and in this regard again notes that it received no comments on the proposal. Accordingly, the Commission believes that the Exchange’s proposed amendments to Article 11, Rule 3 and Article 17, Rules 3 and 7 to require additional recordkeeping regarding QCT crosses is designed to support CHX’s regulatory oversight of QCT crosses and thereby should help protect investors and the public interest, consistent with Section 6(b)(5) of the Act.

⁴¹ See Notice, *supra* note 4, at 37480–81.

⁴² See proposed Article 1, Rule 2(a)(2).

⁴³ See Notice, *supra* note 4, at 37480–81.

⁴⁴ See proposed Article 1, Rule 2(g)(1). The Exchange also proposes to remove from this rule, as well Article 1, Rule 2(a)(2), language that states that cross and Cross With Size orders will execute so long as it would not constitute a trade-through under Regulation NMS (including all applicable exceptions and exemptions). See *id.*; see also proposed Article 1, Rule 2(a)(2). The Exchange notes that it is proposing to remove this language because it is redundant. See Notice, *supra* note 4, at 37481.

⁴⁵ See proposed Article 20, Rule 8(e)(1).

⁴⁶ See Notice, *supra* note 4, at 37481.

⁴⁷ See Notice, *supra* note 4, at 37482.

⁴⁸ 15 U.S.C. 78f(b).

⁴⁹ In approving these proposed rule changes, the Commission has considered the proposed rules’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵⁰ 15 U.S.C. 78f(b)(1).

⁵¹ 15 U.S.C. 78f(b)(5).

⁵² See Notice, *supra* note 4, at 37481, 37483.

⁵³ See *id.* at 37483.

⁵⁴ See *id.*

⁵⁵ See *id.* at 37482.

⁵⁶ See Notice, *supra* note 4, at 37483.

Lastly, the Commission believes that the Exchange's additional proposed amendments to clarify its rules regarding IB recordkeeping accounts (Article 17, Rule 3(c)), the recordkeeping requirements for certain Exchange participants (Article 11, Rule 3), and the operation of the cross order type and Cross With Size handling (Article 1, Rule 2(a)(2), Article 1, Rule 2(g)(1) and Article 20, Rule 8(e)) add transparency and remove any potential ambiguity in those rules and reduce the potential for confusion as to their meaning and intended application, which should help protect investors consistent with Section 6(b)(5) of the Act. In addition, the Commission believes that these proposed changes are reasonably designed to clarify the scope and meaning of those rules, which should help the Exchange assure compliance by Exchange participants with the Exchange's rules, consistent with Section 6(b)(1) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁵⁷ that the proposed rule change (SR-CHX-2017-12), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017-20754 Filed 9-27-17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81682; File No. SR-NYSEArca-2017-103]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reflect Certain Changes Applicable to IQ Municipal Insured ETF, IQ Municipal Intermediate ETF, and IQ Municipal Short Duration ETF

September 22, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on September 13, 2017, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the

proposed rule change as described in Items I and II below, which Items have been prepared by the 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 (1) to reflect a change in the name of the IQ Municipal Insured ETF, IQ Municipal Intermediate ETF, and IQ Municipal Short Duration ETF (each a "Fund" and, collectively, the "Funds"), and (2) to reflect a change in the dollar-weighted average duration to be maintained by the IQ Municipal Insured ETF and IQ Municipal Intermediate ETF. Shares of the Funds have been approved by the Securities and Exchange Commission (the "Commission") for listing and trading on the Exchange under NYSE Arca Rule 8.600-E. The proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares ("Shares") of the Funds under NYSE Arca Rule 8.600-E,³ which governs the

³ See Securities Exchange Act Release Nos. 80584 (May 3, 2017), 82 FR 21573 (May 9, 2017) (SR-NYSEArca-2017-44) (notice of filing of proposed rule change to list and trade shares of the IQ Municipal Insured ETF; IQ Municipal Short Duration ETF; and IQ Municipal Intermediate ETF under NYSE Arca Equities Rule 8.600) ("Prior Notice"); 80885 (June 8, 2017), 82 FR 27302 (June 14, 2017) (SR-NYSEArca-2017-44) (order approving proposed rule change to list and trade shares of the IQ Municipal Insured ETF, IQ Municipal Short Duration ETF, and IQ Municipal

listing and trading of Managed Fund Shares.⁴ The Shares will be offered by the IndexIQ Active ETF Trust (the "Trust"), which is registered with the Commission as an open-end management investment company. Each Fund is a series of the Trust. Shares of the Funds have been approved by the Commission for listing and trading on the Exchange under NYSE Arca Rule 8.600-E. The Funds' Shares have not commenced trading on the Exchange.

On June 27, 2017, the name of the IQ Municipal Insured ETF was changed to IQ MacKay Shields Municipal Insured ETF, the name of the IQ Municipal Intermediate ETF was changed to IQ MacKay Shields Municipal Intermediate ETF, and the name of the IQ Municipal Short Duration ETF was changed to IQ MacKay Shields Municipal Short Duration ETF. This proposed rule change proposes to reflect these changes.

The Prior Release stated that the IQ Municipal Insured ETF generally will maintain a dollar-weighted average duration within plus or minus two years of the dollar-weighted average duration of the S&P Municipal Bond Insured Index. The Fund proposes to change this representation to state that the Fund generally will maintain a dollar-weighted average modified duration of 3 to 15 years.

In addition, the Prior Release stated that the IQ Municipal Intermediate ETF generally will maintain a dollar-weighted average duration within plus or minus two years of the dollar-weighted average duration of the S&P Municipal Bond Intermediate Index. The Fund proposes to change this representation to state that the Fund generally will maintain a dollar-weighted average modified duration of three to ten years.⁵

Intermediate ETF under NYSE Arca Equities Rule 8.600) (Prior Order, and, together with the Prior Notice, the "Prior Release"). All terms referenced but not defined herein are defined in the Prior Release.

⁴ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2-E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

⁵ The Exchange notes that the Commission has approved the listing and trading of other issues of Managed Fund Shares that have a duration range

Continued

⁵⁷ 15 U.S.C. 78s(b)(2).

⁵⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The Adviser represents that the proposal to change representations regarding duration, as described above, is consistent with each applicable Fund's respective investment objective, and will further assist the Adviser and Subadviser to achieve such investment objective. Except for the changes noted above, all other representations made in the Prior Release remain unchanged.⁶ The Funds will comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600–E.

The Adviser represents that the investment objective of the Funds is not changing.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁷ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The names of the Funds have been changed to include the name of the Subadviser (MacKay Shields LLC). The Exchange believes that the change to the representations regarding the dollar-weighted average modified duration of the applicable Funds will not adversely impact investors or Exchange trading and will provide such Funds with

comparable to those proposed for the Funds. *See, e.g.,* Securities Exchange Act Release Nos. 79293 (November 10, 2016), 81 FR 81189 (November 17, 2016)(SR–NYSEArca–2016–107) (order approving listing and trading of shares of Cumberland Municipal Bond ETF under NYSE Arca Equities Rule 8.600, which states that “At least 80% of the weight of the Fund’s assets will be in Municipal Bonds with a modified duration of 15 years or less”); 71617 (February 26, 2014), 79 FR 12257 (March 4, 2014) (SR–NYSEArca–2013–135) (Order Granting Approval of Proposed Rule Change to List and Trade Shares of db-X Ultra-Short Duration Fund and db-X Managed Municipal Bond Fund under NYSE Arca Equities Rule 8.600, which states that “[a]lthough the [db-X Managed Municipal Bond Fund] may adjust duration of its holdings over a wider range, it generally intends to keep it between five and nine years”); 77522 (April 5, 2016), 81 FR 21420 (April 11, 2016) (SR–NYSEArca–2015–125) (order approving proposed rule change to list and trade shares of the Riverfront Dynamic Unconstrained Income ETF and Riverfront Dynamic Core Income ETF under NYSE Arca Equities Rule 8.600, which states that “the Sub-Adviser intends to manage the [Riverfront Dynamic Unconstrained Income ETF’s] portfolio so that it has an average duration of between two and ten years, under normal circumstances”).

⁶ See note 3, *supra*.

⁷ 15 U.S.C. 78f(b)(5).

additional flexibility in managing the Funds’ investments based on the Adviser’s and Subadviser’s assessment of market conditions impacting the Funds’ investments.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change will provide the Adviser and Subadviser with additional flexibility in managing the applicable Funds’ investments based on the Adviser’s and Subadviser’s assessment of market conditions impacting the Funds’ investments and will not impose a burden on competition. In addition, the Funds’ name changes as described above raise no competitive issues.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b–4(f)(6) thereunder.⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 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.

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–2017–103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2017–103. 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–2017–103 and should be submitted on or before October 19, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017–20752 Filed 9–27–17; 8:45 am]

BILLING CODE 8011–01–P

¹⁰ 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION**[Investment Company Act Release No. 32831; File No. 812-14758]****Oaktree Strategic Income, LLC, et al.**

September 22, 2017.

AGENCY: Securities and Exchange Commission (“Commission”).**ACTION:** Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the “Act”) and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act. Applicants request an order to permit a business development company to co-invest in portfolio companies with affiliated investment funds.

APPLICANTS: Oaktree Strategic Income, LLC (“OSI”), Oaktree Capital Management, L.P. (“OCM LP”), Oaktree High Yield Bond Fund, L.P., Oaktree High Yield Fund II, L.P., OCM High Yield Trust, Oaktree Expanded High Yield Fund, L.P., Oaktree Global High Yield Bond Fund, L.P., Oaktree European High Yield Fund, L.P., Oaktree Senior Loan Fund, L.P., Oaktree Enhanced Income Fund III, L.P., Oaktree Enhanced Income Fund III (Parallel), L.P., Oaktree CLO 2014-1 Ltd., Oaktree CLO 2014-2 Ltd., Oaktree CLO 2015-1 Ltd., Oaktree EIF I Series A1, Ltd., Oaktree EIF I Series A, Ltd., Oaktree EIF II Series A1, Ltd., Oaktree EIF II Series A2, Ltd., Oaktree EIF II Series B1, Ltd., Oaktree EIF III Series I, Ltd., Oaktree EIF III Series II, Ltd., Oaktree Strategic Credit Fund A, L.P., Oaktree Strategic Credit Fund B, L.P., Ace Strategic Credit Holdings (Cayman), L.P., Exelon Strategic Credit Holdings, LLC, Oaktree FF Investment Fund, L.P., Oaktree-Minn Strategic Credit, LLC, Oaktree-NGP Strategic Credit, LLC, Oaktree-TBMR Strategic Credit Fund, LLC, Oaktree-TBMR Strategic Credit Fund C, LLC, Oaktree-TBMR Strategic Credit Fund F, LLC, Oaktree-TBMR Strategic Credit Fund G, LLC, Oaktree-TCDRS Strategic Credit, LLC, Oaktree-TSE 16 Strategic Credit, LLC, Oaktree Mezzanine Fund IV, L.P., Oaktree Middle-Market Direct Lending Fund, L.P., Oaktree Middle-Market Direct Lending Unlevered Fund, L.P., Oaktree Middle-Market Direct Lending Fund (Parallel), L.P., Oaktree Middle-Market Direct Lending Unlevered Fund (Parallel), L.P., Oaktree European Capital Solutions Fund (Parallel), L.P., Oaktree European Capital Solutions Fund, L.P., Oaktree

European Special Situations Fund, L.P., Oaktree Desert Sky Investment Fund, L.P., Oaktree Emerging Markets Debt Total Return Fund, L.P., Oaktree Boulder Investment Fund, L.P., OCM Convertible Trust, Oaktree Non-U.S. Convertible Fund, L.P., Oaktree High Income Convertible Fund, L.P., Oaktree High Income Convertible Fund II, L.P., Oaktree Opportunities Fund X, L.P., Oaktree Opportunities Fund X (Parallel), L.P., Oaktree Opportunities Fund X (Parallel 2), L.P., Oaktree Opportunities Fund Xb, L.P., Oaktree Opportunities Fund Xb (Parallel), L.P., Oaktree Opportunities Fund Xb (Parallel 2), L.P., Oaktree Huntington Investment Fund II, L.P., Oaktree Cascade Investment Fund I, L.P., Oaktree Cascade Investment Fund II, L.P., Oaktree Value Opportunities Fund, L.P., Oaktree BAA Emerging Market Opportunities Fund, L.P., Oaktree Glacier Investment Fund, L.P., Oaktree TX Emerging Market Opportunities Fund, L.P., Oaktree Emerging Market Opportunities Fund, L.P., Oaktree Special Situations Fund, L.P., OCM Avalon Co-Investment Fund, L.P., Oaktree European Principal Fund IV, L.P., Oaktree European Principal Fund IV, S.C.S., Oaktree Power Opportunities Fund IV, L.P., Oaktree Power Opportunities Fund IV (Parallel), L.P., Oaktree Infrastructure Fund, L.P., Oaktree Infrastructure Fund (Parallel), L.P., Oaktree Infrastructure Fund, S.C.S., Oaktree Energy Infrastructure Fund, L.P., Oaktree Energy Infrastructure Fund (Parallel), L.P., Oaktree Transportation Infrastructure Fund, L.P., Oaktree Transportation Infrastructure Fund (Parallel), L.P., Oaktree Real Estate Opportunities Fund VII, L.P., Oaktree Real Estate Opportunities Fund VII (Parallel), L.P., Oaktree Real Estate Opportunities Fund VII (Parallel 2), L.P., Oaktree Real Estate Opportunities Fund VII (Parallel 3), L.P., Oaktree Real Estate Opportunities Fund VII (Parallel 4), L.P., Oaktree Juniper Investment Fund, L.P., Oaktree Pinnacle Investment Fund, L.P., Oaktree Real Estate Debt Fund II, L.P., Oaktree Real Estate Debt Fund II (Parallel), L.P., Oaktree Real Estate Income Fund, L.P., Oaktree Real Estate Debt Securities Fund—SF, LLC, Oaktree Emerging Markets Absolute Return Fund, L.P., Oaktree Emerging Markets Equity Fund, L.P., Oaktree Value Equity Fund, L.P., Oaktree Japan Absolute Return Fund, L.P., Oaktree Private Investment Fund IV, L.P., Oaktree-Forrest Multi-Strategy, LLC, Oaktree TT Multi-Strategy Fund, L.P., and Oaktree Global Credit Fund, L.P.

FILING DATES: The application was filed on March 30, 2017, and amended on August 28, 2017.

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 17, 2017, and should be accompanied by proof of service on 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 St. NE., Washington, DC 20549-1090. Applicants: 333 South Grand Ave., 28th Floor, Los Angeles, CA 90071.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551-6811, or David J. Marcinkus, Branch Chief, at (202) 551-6821 (Chief Counsel’s Office, Division of Investment Management).

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.

Introduction

1. The Applicants request an order of the Commission under Sections 17(d) and 57(i) and Rule 17d-1 thereunder (the “Order”) to permit, subject to the terms and conditions set forth in the application (the “Conditions”), a Regulated Fund¹ and one or more other Regulated Funds and/or one or more

¹ “Regulated Funds” means OSI and any other Future Regulated Funds. “Future Regulated Fund” means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC and (b) whose investment adviser is an Adviser. “Adviser” means OCM LP together with any future investment adviser that (i) controls, is controlled by or is under common control with OCM LP, (ii) is registered as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”), and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

Affiliated Funds² to enter into Co-Investment Transactions with each other. “Co-Investment Transaction” means any transaction in which one or more Regulated Funds (or its Wholly-Owned Investment Sub) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. “Potential Co-Investment Transaction” means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.³

Applicants

2. OSI is a Delaware limited liability company and a closed-end management investment company that will elect to be regulated as a business development company (“BDC”) under the Act.⁴ Upon OSI’s election to be regulated as a BDC, OSI’s Board⁵ will be comprised of a majority of members who are Independent Directors.⁶

3. OCM LP, a Delaware limited partnership that is registered under the Advisers Act, serves as the investment adviser to OSI.

4. The Existing Affiliated Funds are the investment funds identified in Appendix A to the application. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and each would be an investment company but for Section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act. OCM LP is the Adviser to the Existing Affiliated Funds.

5. Each of the Applicants may be deemed to be controlled by Oaktree

² “Affiliated Fund” means any Existing Affiliated Fund (identified in Appendix A to the application) or any entity (a) whose investment adviser is an Adviser, (b) that would be an investment company but for Section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act and (c) that intends to participate in the program of co-investments described in the application.

³ All existing entities that currently intend to rely on the Order have been named as Applicants and any existing or future entities that may rely on the Order in the future will comply with its terms and Conditions set forth in the application.

⁴ Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in Section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

⁵ “Board” means the board of directors (or the equivalent) of a Regulated Fund.

⁶ “Independent Director” means a member of the Board of any relevant entity who is not an “interested person” as defined in Section 2(a)(19) of the Act. No Independent Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

Capital Group, LLC (“OCG”), a publicly traded company. OCG owns controlling interests in the Adviser and, thus, may be deemed to control the Regulated Funds and the Affiliated Funds. Applicants state that OCG is a holding company and does not currently offer investment advisory services to any person and is not expected to do so in the future. Applicants state that as a result, OCG has not been included as an Applicant.

6. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.⁷ Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Entity for purposes of Section 57(a)(4) and Rule 17d-1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Entity that owns it and that the Wholly-Owned Investment Sub’s participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund’s investments and, therefore, no conflicts of interest could arise between the parent Regulated Fund and the Wholly-Owned Investment Sub. The Board of the parent Regulated Fund would make all relevant determinations under the Conditions with regard to a Wholly-Owned Investment Sub’s participation in a Co-Investment Transaction, and the Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund’s place. If the parent

⁷ “Wholly-Owned Investment Sub” means an entity (i) that is wholly-owned by a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and, in the case of a SBIC Subsidiary (defined below), maintain a license under the SBA Act (defined below) and issue debentures guaranteed by the SBA (defined below)); (iii) with respect to which such Regulated Fund’s Board has the sole authority to make all determinations with respect to the entity’s participation under the Conditions; and (iv) that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act. “SBIC Subsidiary” means a Wholly-Owned Investment Sub that is licensed by the Small Business Administration (the “SBA”) to operate under the Small Business Investment Act of 1958, as amended, (the “SBA Act”) as a small business investment company.

Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board of the parent Regulated Fund will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

Applicants’ Representations

A. Allocation Process

7. Applicants state that the Adviser is presented with thousands of investment opportunities each year on behalf of its clients and after OSI elects to be regulated as a BDC, the Adviser will determine how to allocate those opportunities in a manner that, over time, is fair and equitable to all of its clients. Such investment opportunities may be Potential Co-Investment Transactions.

8. Applicants represent that the Adviser has established processes for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, Applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

9. Specifically, applicants state that the Adviser is organized and managed such that the portfolio managers and analysts (“Investment Teams”), responsible for evaluating investment opportunities and making investment decisions on behalf of clients are promptly notified of the opportunities. If the requested Order is granted, the Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that, when such opportunities arise, the Advisers to the relevant Regulated Funds are promptly notified and receive the same information about the opportunity as any other Advisers considering the opportunity for their clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies⁸

⁸ “Objectives and Strategies” means with respect to any Regulated Fund, its investment objectives and strategies, as described in its most current registration statement on Form N-2, other current filings with the Commission under the Securities Act of 1933 (the “Securities Act”) or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders.

and any Board-Established Criteria⁹ of a Regulated Fund, the policies and procedures will require that the relevant Investment Team responsible for that Regulated Fund receive sufficient information to allow the Regulated Fund's Adviser to make its independent determination and recommendations under the Conditions.

10. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

11. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the Adviser will submit a proposed order amount to an internal allocation committee which the Adviser will establish to handle the allocation of investment opportunities in Potential Co-Investment Transactions (the "Co-Investment Transaction Allocation Committee"). Applicants state further that, at this stage, each proposed order amount may be reviewed and adjusted, in accordance with the Advisers' written allocation policies and procedures, by the Co-Investment Transaction Allocation Committee.¹⁰ The order of a Regulated

Fund or Affiliated Fund resulting from this process is referred to as its "Internal Order." The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.¹¹

12. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the "External Submission"), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.¹² If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.¹³

¹¹ "Required Majority" means a required majority, as defined in Section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to Section 57(o).

¹² The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions. "Eligible Directors" means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under Section 57(o) of the Act.

¹³ However, if the size of the opportunity is decreased such that the aggregate of the original Internal Orders would exceed the amount of the remaining investment opportunity, then upon submitting any revised order amount to the Board of a Regulated Fund for approval, the Adviser to the Regulated Fund will also notify the Board promptly of the amount that the Regulated Fund would receive if the remaining investment opportunity were allocated pro rata on the basis of the size of the original Internal Orders. The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with condition 2, 6, 7, 8 or 9, as applicable.

B. Follow-On Investments

13. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments¹⁴ in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

14. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.¹⁵ If the Regulated Funds and Affiliated Funds had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

15. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment¹⁶ or (ii) a Non-

¹⁴ "Follow-On Investment" means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

¹⁵ "Pre-Boarding Investments" are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that: (i) Were acquired prior to participating in any Co-Investment Transaction; (ii) were acquired in transactions in which the only term negotiated by or on behalf of such funds was price; and (iii) were acquired either: (A) in reliance on one of the JT No-Action Letters (defined below); or (B) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

¹⁶ A "Pro Rata Follow-On Investment" is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund

⁹ "Board-Established Criteria" means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

¹⁰ The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of the Advisers.

Negotiated Follow-On Investment.¹⁷ Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

16. Applicants propose that Dispositions¹⁸ would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.¹⁹

is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

¹⁷ A "Non-Negotiated Follow-On Investment" is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters. "JT No-Action Letters" means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

¹⁸ "Disposition" means the sale, exchange or other disposition of an interest in a security of an issuer.

¹⁹ However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also

17. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition²⁰ or (ii) the securities are Tradable Securities²¹ and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

18. Applicants represent that under the terms and Conditions of the Application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa.²² Nevertheless, in all cases, (i) the

in relation to the total economic exposure in such issuer (*i.e.*, in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review would be required because such findings would not have been required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

²⁰ A "Pro Rata Disposition" is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

²¹ "Tradable Security" means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

²² Applicants state this may occur for two reasons. First, when the Affiliated Fund or

date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

19. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the "Holders") own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the "Shares"), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the Condition. Applicants believe that this Condition will ensure that the Independent Directors will act independently in evaluating Co-Investment Transactions, because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed will be limited significantly. The Independent Directors shall evaluate and approve any independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit participation by a registered investment company and an affiliated person in any "joint enterprise or other joint arrangement or profit-sharing plan," as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d-1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company

Regulated Fund is not yet fully funded because, when the Affiliated Fund or Regulated Fund desires to make an investment, it must call capital from its investors to obtain the financing to make the investment, and in these instances, the notice requirement to call capital could be as much as ten business days. Second, where, for tax or regulatory reasons, an Affiliated Fund or Regulated Fund does not purchase new issuances immediately upon issuance but only after a short seasoning period of up to ten business days.

controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d-1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of Rule 17d-1 and Section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by Rule 17d-1 and/or Section 57(b), as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because (i) controlled affiliates of OCG manage each of the Affiliated Funds and may be deemed to control any Future Regulated Fund, (ii) OCG controls OCM LP, which manages OSI. Thus, each of the Affiliated Funds could be deemed to be a person related to OSI in a manner described by Section 57(b) and related to other Future Regulated Funds in a manner described by Rule 17d-1; and therefore the prohibitions of Rule 17d-1 and Section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds.

4. In passing upon applications under rule 17d-1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by Rule 17d-1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting

the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. Identification and Referral of Potential Co-Investment Transactions.

(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. Board Approvals of Co-Investment Transactions.

(a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's

investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) The interests of the Regulated Fund's equity holders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or

management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect²³ financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by Section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,²⁴ a Regulated Fund will not invest in reliance on the Order in any

²³ For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

²⁴ This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

issuer in which a Related Party has an investment.²⁵

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a

²⁵ "Related Party" means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate. "Close Affiliate" means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in Section 57(b) (after giving effect to Rule 57b-1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in Section 57(b) to Section 2(a)(3)(D). "Remote Affiliate" means any person described in Section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i) (A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition;²⁶ (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all

²⁶ In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i) The Disposition complies with Conditions 2(c)(i), (ii), (iii)(A), and (iv); and

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 or Rule 17d-1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements.* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b-1) or Rule 17d-1, as applicable;

(iv) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial²⁷ in

amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i) (A) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,²⁸ immediately preceding the Follow-On Investment;

and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

²⁸ To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the Application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them *pro rata* based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. *Enhanced Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds

²⁷ In determining whether a holding is "immaterial" for purposes of the Order, the Required Majority will consider whether the nature

securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b-1) or Rule 17d-1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b-1) or Rule 17d-1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the

same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.(b) of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund,

and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund's chief compliance officer, as defined in rule 38a-1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance.

(d) The Independent Directors will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by Section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under Section 57(f).

12. *Director Independence.* No Independent Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an "affiliated person" (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective

advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*²⁹ Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by Section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in Section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by Section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81680; File No. SR-ICEEU-2017-010]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Amendments to the ICE Clear Europe CDS Risk Policy

September 22, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 15, 2017, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by ICE Clear Europe. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to amend ICE Clear Europe's CDS Risk Policy relating to portfolio margining, as described below, to comply with Article 27 of Commission Delegated Regulation (EU) No. 153/2013³ (the "Portfolio Margining Limitation").

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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 III below. ICE Clear Europe has prepared summaries,

set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe proposes to adopt amendments to the CDS Risk Policy relating to portfolio margining. The changes discussed herein apply to all cleared credit default swap ("CDS") products.

The amendments are intended to comply with the Portfolio Margining Limitation implementing the European Market Infrastructure Regulation ("EMIR"),⁴ which requires that where portfolio margining covers multiple different instruments, the amount of margin reduction that the clearing house may offer can be no greater than 80% of the difference between the sum of the margins for each product calculated on an individual basis and the margin calculated based on an estimation of the exposure for the combined portfolio. By contrast, where the margin reduction relates to positions in the same instrument, the clearing house may apply a margin reduction of up to 100% of that difference. The European Securities and Markets Authority ("ESMA"), the competent authority with respect to this requirement under EMIR, has issued an opinion interpreting this requirement in the context of CDS to provide⁵ that (i) credit derivatives on different underlying names or indexes (including two series of the same index) should be considered different products; and (ii) credit derivatives on the same underlying name or index with different maturities or coupons may be considered as the same product. According to ICE Clear Europe, the effect of this is to require that credit derivatives on different index series of the same index family be considered different instruments under the Portfolio Margining Limitation and that therefore portfolio margining for such instruments must be limited to 80% of the gross margins.

To implement the Portfolio Margining Limitation, ICE Clear Europe is amending its CDS Risk Policy such that when calculating the spread response charge (which provides portfolio margin

⁴ Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

⁵ Section 3.1.2.C of the ESMA Opinion On Portfolio Margining Requirements under Article 27 of Commission Delegated Regulation (EU) No. 153/2013 dated 10 April 2017 (the "ESMA Opinion").

²⁹ Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Commission Delegated Regulation (EU) No. 153/2013 dated 23 February 2013.

reductions across a variety of correlated positions, including positions in different series of the same index), the 99.5% Value-at-Risk (“VaR”) Monte Carlo (“MC”) benchmark⁶ used in the calculation will have a minimum amount equal to 20% of the portfolio gross 99.5% MC VaR requirements. The gross requirement is defined for this purpose as the sum of the requirements at risk factor level for single names (for single-name CDS) and index series level (for index CDS) (*i.e.*, without portfolio margin offsets across such products). ICE Clear Europe is required to implement the Portfolio Margining Limitation by September 30, 2017.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act⁷ and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.⁸ Section 17A(b)(3)(F) of the Act⁹ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. In addition, Rule 17Ad-22(b)(2)¹⁰ requires that a registered clearing agency that performs central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements. Furthermore, Rule 17Ad-22(e)(6)(v)¹¹ requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.

The proposed amendments to the CDS Risk Policy would apply a 20% floor to the 99.5% VaR MC aspect of ICE Clear Europe’s spread response margin component calculation, based on the gross margin requirement without portfolio offsets. The amendments are being made in order to comply with the Portfolio Margin Limitation imposed under EMIR, as set out in the ESMA Opinion, and may in some cases result in higher initial margin requirements for market participants. ICE Clear Europe believes that the amended requirement (as with the current methodology) represents an appropriate risk-based margin framework to take into account portfolio risk reduction and related portfolio effects in a manner that will continue to enable the clearing house to mitigate the risk of clearing member default. In ICE Clear Europe’s view, the amendments are therefore consistent with the requirements of the Act and Commission regulations set forth above.

(B) Clearing Agency’s Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed in order to implement that Portfolio Margining Limitation under EMIR. The amendments will affect all CDS Clearing Members and CDS market participants. ICE Clear Europe does not believe the amendments will impact competition among CDS Clearing Members or other market participants, or affect the ability of market participants to access clearing generally. As noted above, the amendments may increase initial margin requirements with respect to some portfolios, because of the limitation on margin reductions as compared to the current methodology. Although this may affect the cost of clearing for some market participants, any increased costs will reflect the requirements imposed under the EMIR Portfolio Margining Limitation and the risk management benefits for the clearing house that are designed to be obtained through the Portfolio Margining Limitation. As a result, ICE Clear Europe believes that any impact on competition is appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been

solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice 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-ICEEU-2017-010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-ICEEU-2017-010. 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, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe’s Web site at <https://www.theice.com/notices/Notices.shtml?regulatoryFilings>.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

⁶ The 99.5% VaR MC benchmark serves as a minimum initial margin level.

⁷ 15 U.S.C. 78q-1.

⁸ 17 CFR 240.17Ad-22.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 240.17Ad-22(b)(2).

¹¹ 17 CFR 240.17Ad-22(e)(6)(v).

you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2017–010 and should be submitted on or before October 19, 2017.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Section 19(b)(2)(C) of the Act¹² directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act¹³ requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest. Rule 17Ad–22(b)(2)¹⁴ requires that a registered clearing agency that performs central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements. Furthermore, Rule 17Ad–22(e)(6)(v)¹⁵ requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.

The Commission finds that the proposed rule change is consistent with Section 17A of the Act and the relevant rules thereunder.¹⁶ The proposed rule change is designed to comply with the Portfolio Margining Limitation of Article 27 of Commission Delegated Regulation (EU) No. 153/2013.¹⁷ As interpreted by ESMA, this limitation will not permit complete margin offsets between different cleared instruments, which in the CDS context means CDS

with different reference entities, including different versions of the same index. Instead, any margin reductions resulting from the portfolio margining of different CDS instruments must be limited to 80% of the difference between the sum of the margins for each instrument calculated on an individual basis and the margin calculated based on a combined estimation of the exposure for the combined portfolio. Margin reductions from portfolio margining of the same CDS instruments, *i.e.* on the same underlying name or index, even with different maturities or coupons, can be applied without limitation. ICE Clear Europe has chosen to implement this requirement by limiting the margin reductions calculated from the 99.5% VaR MC aspect of its spread response methodology to 20% of the gross margin requirement without portfolio offsets.

The Commission has reviewed the proposed rule change, including the changes to ICE Clear Europe's policies and procedures, as well as data on the estimated impact of the proposed rule change on margin requirements. Based on this review, the Commission finds that the proposed rule change is designed to implement a more conservative approach to portfolio margining reductions than under ICE Clear Europe's existing spread response calculation methodology and is therefore consistent with assuring the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The approach is risk-based and does not impose unduly conservative margin requirements that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹⁸

For the same reasons, the Commission further finds that the proposed rule change is consistent with Rule 17Ad–22(b)(2),¹⁹ in that any additional margin collected based on this more conservative approach should support ICE Clear Europe's risk management functions and ability to limit its credit exposures, consistent with Rule 17Ad–22(b)(2).²⁰

Similarly, the Commission further finds that the proposed rule change is consistent with Rule 17Ad–22(e)(6)(v).²¹ The proposed rule change does not eliminate portfolio margin reductions. The proposed rule change allows for portfolio margin reductions of 100%

where the margin reduction relates to positions in the same instrument. Where the portfolio margining covers multiple different instruments, the proposed rule change limits the margin reduction to no greater than 80%, consistent with EMIR. The Commission finds that this is a reasonably designed method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across different products consistent with Rule 17Ad–22(e)(6)(v).²²

In its filing, ICE Clear Europe requested that the Commission grant accelerated approval of the proposed rule change pursuant to Section 19(b)(2)(C)(iii) of the Exchange Act.²³ Under Section 19(b)(2)(C)(iii) of the Act,²⁴ the Commission may grant accelerated approval of a proposed rule change if the Commission finds good cause for doing so. ICE Clear Europe believes that accelerated approval is warranted because the proposed rule change is required as of September 30, 2017 in order to comply with the Portfolio Margin Limitation under EMIR, as interpreted by ESMA.

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,²⁵ for approving the proposed rule change on an accelerated basis, prior to the 30th day after the date of publication of notice in the **Federal Register**, because the proposed rule change is required as of September 30, 2017 in order to comply with EMIR.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act²⁶ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule change (File No. SR–ICEEU–2017–010) be, and hereby is, approved on an accelerated basis.²⁸

²² 17 CFR 240.17Ad–22(e)(6)(v).

²³ 15 U.S.C. 78s(b)(2)(C)(iii).

²⁴ 15 U.S.C. 78s(b)(2)(C)(iii).

²⁵ 15 U.S.C. 78s(b)(2)(C)(iii).

²⁶ 15 U.S.C. 78q–1.

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78s(b)(2)(C).

¹³ 15 U.S.C. 78q–1(b)(3)(F).

¹⁴ 17 CFR 240.17Ad–22(b)(2).

¹⁵ 17 CFR 240.17Ad–22(e)(6)(v).

¹⁶ 15 U.S.C. 78q–1.

¹⁷ Commission Delegated Regulation (EU) No. 153/2013 dated 23 February 2013.

¹⁸ See 15 U.S.C. 78q–1(b)(3)(I).

¹⁹ 17 CFR 240.17Ad–22(b)(2).

²⁰ 17 CFR 240.17Ad–22(b)(2).

²¹ 17 CFR 240.17Ad–22(e)(6)(v).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81681; File No. SR-NYSEArca-2017-107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of Breakwave Dry Bulk Shipping ETF Under NYSE Arca Rule 8.200-E, Commentary .02

September 22, 2017.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 8, 2017, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of Breakwave Dry Bulk Shipping ETF under NYSE Arca Rule 8.200-E, Commentary .02 (“Trust Issued Receipts”). The proposed change is available on the Exchange’s Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the following under NYSE Arca Rule 8.200-E, Commentary .02, which governs the listing and trading of Trust Issued Receipts: Breakwave Dry Bulk Shipping ETF (the “Fund”).⁴

The Fund will be a series of ETF Managers Group Commodity Trust I (the “Trust”).⁵ The Fund and the Trust will be managed and controlled by their sponsor and investment manager, ETF Managers Capital LLC (the “Sponsor”). The Sponsor is registered with the Commodity Futures Trading Commission (“CFTC”) as a commodity pool operator (“CPO”) and is a member of the National Futures Association (“NFA”). Breakwave Advisors LLC (“Breakwave”) is registered as a commodity trading advisor with the CFTC and will serve as the Fund’s commodity trading advisor. ETFMG Financial LLC will be the Fund’s distributor (“Distributor” or “Marketing Agent”). US Bancorp Fund Services LLC will be the Fund’s “Administrator” and “Transfer Agent”.

The Fund’s Investment Objective and Strategy

According to the Registration Statement, the Fund’s investment objective will be to provide investors with exposure to the daily change in the price of dry bulk freight futures, before expenses and liabilities of the Fund, by tracking the performance of a portfolio (the “Benchmark Portfolio”) consisting of a three-month strip of the nearest calendar quarter of futures contracts on specified indexes (each a “Reference Index”) that measure rates for shipping dry bulk freight (“Freight Futures”). Each Reference Index is published daily

⁴ Commentary .02 to NYSE Arca Rule 8.200-E applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200-E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

⁵ On June 2, 2017, the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”) relating to the Fund (File No. 333-218453) (the “Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement.

by the London-based Baltic Exchange Ltd⁶ and measures the charter rate for shipping dry bulk freight in a specific size category of cargo ship—Capesize, Panamax or Supramax. The three Reference Indexes are as follows: Capesize: the Capesize 5TC Index; Panamax: the Panamax 4TC Index; and Supramax: the Supramax 6TC Index.⁷

The Fund will seek to achieve its investment objective by investing substantially all of its assets in the Freight Futures currently constituting the Benchmark Portfolio. The Benchmark Portfolio will include all existing positions to maturity and settle them in cash. During any given calendar quarter, the Benchmark Portfolio will progressively increase its position to the next calendar quarter three-month strip, thus maintaining constant exposure to the Freight Futures market as positions mature.

The Benchmark Portfolio will maintain long-only positions in Freight Futures. The Benchmark Portfolio will hold a combination of Capesize, Panamax and Supramax Freight Futures. More specifically, the Benchmark Portfolio will hold 50% exposure in Capesize Freight Futures contracts, 40% exposure in Panamax Freight Futures contracts and 10% exposure in Supramax Freight Futures contracts. The Benchmark Portfolio will not include and the Fund will not invest in swaps, non-cleared dry bulk freight forwards or other over-the-counter

⁶ The Baltic Exchange, which is a wholly owned subsidiary of the Singapore Exchange Ltd (“SGX”), is a membership and an independent source of maritime market information for the trading and settlement of physical and derivative shipping contracts. According to the Baltic Exchange, this information is used by shipbrokers, owners and operators, traders, financiers and charterers as a reliable and independent view of the dry and tanker markets.

⁷ The Reference Indexes are published by the Baltic Exchange’s subsidiary company, Baltic Exchange Information Services Ltd (“Baltic”), which publishes a wide range of market reports, fixture lists and market rate indicators on a daily and (in some cases) weekly basis. The Baltic indices, which include the Reference Indexes, are an assessment of the price of moving the major raw materials by sea. The indices are based on assessments of the cost of transporting various bulk cargoes, both wet (e.g., crude oil and oil products) and dry (e.g., coal and iron ore), made by leading shipbroking houses located around the world on a per tonne and daily hire basis. The information is collated and published by the Baltic Exchange. Procedures relating to administration of the Baltic indices are set forth in “The Baltic Exchange, Guide to Market Benchmarks” November 2016 (the “Guide”), including production methods, calculation, confidentiality and transparency, duties of panelists, code of conduct, audits and quality control. According to the Guide, these procedures are in compliance with the “Principles for Financial Benchmarks” issued by the International Organization of Securities Commissioners (“IOSCO”). The Guide is available at www.balticexchange.com.

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

derivative instruments that are not cleared through exchanges or clearing houses. The Fund may hold exchange-traded options on Freight Futures. The Benchmark Portfolio is maintained by Breakwave and will be rebalanced annually.

When establishing positions in Freight Futures, the Fund will be required to deposit initial margin with a value of approximately 10% to 40% of the notional value of each Freight Futures position at the time it is established. These margin requirements are established and subject to change from time to time by the relevant exchanges, clearing houses or the Fund's futures commission merchant ("FCM"). On a daily basis, the Fund will be obligated to pay, or entitled to receive, variation margin in an amount equal to the change in the daily settlement level of its Freight Futures positions. Any assets not required to be posted as margin with the FCM will be held at the Fund's custodian in cash or cash equivalents.⁸

The Fund will seek to achieve its objective by purchasing Freight Futures that are cleared through major exchanges (see description of Freight Futures below). The Fund will place purchase orders for Freight Futures with an execution broker. The broker will identify a selling counterparty and, simultaneously with the completion of the transaction, will submit the block traded Freight Futures to the relevant exchange or clearing house for clearing, thereby completing and creating a cleared futures transaction. If the exchange or clearing house does not accept the transaction for any reason, the transaction will be considered null and void and of no legal effect. The Fund's investments in Freight Futures will be cleared by Nasdaq OMX-Stockholm AB, Chicago Mercantile Exchange ("CME"), ICE Futures U.S., SGX and/or the European Energy Exchange ("EEX").⁹

The Benchmark Portfolio will initially consist of positions in the three-month strip of the nearest calendar quarter of Freight Futures and roll them constantly to the next calendar quarter. The four-calendar quarters are January, February, and March (Q1), April, May, and June (Q2), July, August, and September (Q3),

⁸The Fund will hold cash or cash equivalents, such as U.S. Treasuries or other high credit quality, short-term fixed-income or similar securities for direct investment or as collateral for the U.S. Treasuries and for other liquidity purposes, and to meet redemptions that may be necessary on an ongoing basis.

⁹Nasdaq OMX-Stockholm AB, SGX, CME and ICE Futures U.S. are members of the Intermarket Surveillance Group ("ISG"). See note 16, *infra*.

and October, November and December (Q4). The Benchmark Portfolio will initially consist of an equal number of Freight Futures in each of the three months comprising the nearby calendar quarter at the beginning of such quarter.

Throughout the quarter, the Fund will attempt to roll positions in the nearby calendar quarter, on a pro rata basis. For example, if the Fund was currently holding the Q1 calendar quarter comprising the January, February and March monthly contracts, each week in the month of February, the Fund will attempt to purchase Q2 contracts in an amount equal to approximately one quarter of the expiring February positions. As a result, by the end of February, the Fund would have rolled the February position to Q2 contracts, leaving the Fund with March and Q2 contracts. At the end of March, the Fund will have completed the roll and will then hold only Q2 exposure comprising April, May and June monthly contracts. Since Freight Futures contracts are cash settled, the Fund need not sell out of existing contracts. Rather, it will hold such contracts to expiration and apply the above methodology in order to acquire the nearby calendar contract.

The Benchmark Portfolio will be rebalanced annually. The Benchmark Portfolio's initial allocation will be approximately 50% Capesize Freight Futures contracts, 40% Panamax Freight Futures contracts and 10% Supramax Freight Futures contracts. The above allocation will be based on contract value, not number of lots. Given each asset's individual price movements during the year, such percentages might deviate from the targeted allocation.

During the month of December of each year, the Fund will rebalance its portfolio in order to bring the allocation of assets back to the desirable levels. During this period, the Fund would purchase or sell Freight Futures to achieve its targeted allocation.

The Sponsor anticipates that the Fund's Freight Futures positions will be held to expiration and settle in cash against the respective Reference Index as published by the Baltic Exchange. However, positions may be closed out to meet orders for redemption of baskets, in which case the proceeds from the closed positions will not be reinvested.

The Fund's portfolio will be traded with a view to reflecting the performance of Freight Futures, whether Freight Futures are rising, falling or flat over any particular period. To maintain the correlation between the Fund and the change in the Benchmark Portfolio, the Sponsor may adjust the Fund's portfolio of investments on a daily basis

in response to creation and redemption orders or otherwise as required.

Overview of the Dry Bulk Freight Industry

As stated in the Registration Statement, the following is a brief introduction of the global dry bulk freight industry. The data presented below is derived from information released from various third-party sources. The third-party sources from which certain of the information presented below include the United Nations Conference on Trade and Development, the Baltic and International Maritime Council, Bloomberg and others. Dry bulk shipping is a 150-plus year-old industry focusing on the transportation of dry bulk commodities using oceangoing vessels named dry bulk carriers. Dry bulk carriers are ships that have cargo loaded directly into the ship's storage holds. The cargos transported are dry commodities that do not need to be carried in packaged form. Dry commodity cargos (mainly iron ore, coal and grains) are homogenous and are loaded with bucket cranes, conveyors or pumps. Crude oil and refined products, while shipped in bulk, are wet cargos and are transported on tanker vessels, rather than dry bulk carriers. Dry bulk carriers have an average useful life of approximately 25 years and are measured on size or capacity in dead weight tons ("DWT").

Dry Bulk Carriers Come in Various Sizes

Capesizes (100,000+ DWT) are the largest of the dry bulk asset classes. Capesizes primarily transport iron ore and coal. Traditional Capesize routes are from Australia to Asia, and from Brazil to Europe and Asia. There are about 1,650 Capesizes worldwide. The Capesize fleet is about 40% of the dry bulk fleet by DWT capacity.

Panamaxes (65,000–100,000 DWT) primarily transport coal, grain and iron ore. The Panamax is the largest vessel class that can transit the (old) Panama Canal. There are about 2,500 Panamaxes worldwide representing 24% of the global fleet by capacity.

Handymaxes (40,000–65,000 DWT) are the work horse of the industry, carrying the whole spectrum of dry bulk commodities: Grain, coal, iron ore, and minor bulks. A sub-category of Handymaxes are vessels with capacities of 50,000–65,000 that are called Supramaxes. There are 3,400 Handymaxes worldwide representing about 25% of the global fleet by DWT capacity.

Handysizes (10,000–40,000 DWT) bulkers typically transport grain, coal,

and minor bulks. Handysize bulkers tend to trade regionally. There are about 3,300 Handysize bulkers in the fleet, or about 11% of the global fleet by DWT capacity.

Dry Bulk Vessel Supply

According to the Registration Statement, there are approximately 10,500 dry bulk vessels worldwide with a carrying capacity of roughly 790 million DWT and an average age of approximately 8 years. Supply of dry bulk ships is dynamic.

Factors impacting dry bulk supply include new orders, the scrapping of older vessels, new shipbuilding technologies, vessel congestion in ports, closures of major waterways, including canals, and wars and other geopolitical conflicts that can restrict access to vessels available for shipping dry bulk freight.

Demand for Dry Bulk Freight

According to the Registration Statement, dry bulk demand has seen steady growth over the past two decades, as the Asian economies have exhibited robust demand for raw materials on the back of strong economic growth. Iron ore, the main component of steel production, has been the main driver of dry bulk freight demand growth. The higher demand for such raw materials has led to increasing demand for dry bulk shipping, as the regions that produce and consume raw materials are located far apart.

Demand for dry bulk freight is generally measured in ton-miles, which corresponds to one ton of freight carried one mile. Such measure takes into consideration both the quantity of cargo transport but also the distance between loading and offloading ports. Over the last 10 years, dry bulk freight demand growth for major commodities has averaged approximately 6% per year. In 2015, dry bulk freight demand growth for major commodities declined for the first time in at least 15 years, while in 2016, it is estimated to have increased by approximately 2%. Weaker iron ore and coal imports to China were the main reasons for the below trend growth.

Factors impacting demand for shipping dry bulk freight include global economic growth, demand for iron ore, demand for metallurgical and thermal coal, demand for grains, government regulations, taxes and tariffs, fuel prices, vessel speeds and new trade routes.

Dry Bulk Freight Charter Rates

According to the Registration Statement, dry bulk freight "charter rates" reflect the price paid for the use

of the ship to transport a bulk commodity. The most commonly used freight rate is the timecharter rate, which is measured in U.S. Dollars per day. Dry bulk timecharter rates have exhibited significant volatility in the last 15 years. From 2003 to 2008, faster growth rates in demand for dry bulk ships was not matched by growth in supply of ships and thus, charter rates increased considerably, reaching their highest point in 2008. Following the global financial crisis, growth in supply of ships exceeded demand, leading to a considerable drop in charter rates. Over the last five years, rates have generally been weak compared to historical levels, as higher supply and relatively weak demand growth led to lower utilization rates in the industry.

A common industry measure of dry bulk rates is the Baltic Dry Index ("BDI"). The BDI is an economic indicator issued daily by the Baltic Exchange. The BDI provides an assessment of the price of moving the major raw materials by sea throughout the world. Taking in 21 shipping routes measured on a timecharter basis, the index covers Handysize, Supramax, Panamax, and Capesize dry bulk carriers carrying a range of commodities including coal, iron ore and grain. Each individual asset class also has its own index (*i.e.*, a Reference Index), which is also published daily by the Baltic Exchange and reflects a weighted average assessment of different standardized routes around the world.

The BDI has reflected the volatility of charter rates over the last 15 years, reaching its highest point on record in 2008 at 11,793. In 2016, it reached its lowest point on record at 290. The average price of the BDI in the 15 years from 2001 to 2016, has been 2,567, and the median price has been 1,747. As of March 31, 2017, the BDI stood at 1,200.

Freight Futures

According to the Registration Statement, freight futures are financial futures contracts that allow ship owners, charterers and speculators to hedge against the volatility of freight rates. The Freight Futures are built on indices composed of baskets of routes for dry bulk freight, such as the Capesize 5TC Index, Panamax 4TC Index and Supramax 6TC Index. Freight Futures are financial instruments that trade off-exchange but then are cleared through an exchange. Market participants communicate their buy or sell orders through a network of execution brokers mainly through phone or instant messaging platforms with specific trading instructions related to price, size, and type of order.

The execution broker receives such order and then attempts to match it with a counterparty. Once there is a match and both parties confirm the transaction, the execution broker submits the transaction details including trade specifics, counterparty details and accounts to the relevant exchange for clearing, thus completing a cleared block futures transaction. The exchange will then require the relevant member or FCM to submit the necessary margin to support the position similar to other futures clearing and margin requirements.

Freight Futures are listed and cleared on the following exchanges: Nasdaq OMX-Stockholm AB, CME, ICE Futures U.S., SGX, and EEX.

Freight Futures settle monthly over the arithmetic average of spot index assessments in the contract month for the relevant underlying product, rounded to one decimal place. The daily index publication, against which Freight Futures settle, is published by the Baltic Exchange.

Generally, Freight Futures trade from approximately 12:00 a.m. Eastern Time ("E.T.") to approximately 12:00 p.m. E.T. The great majority of trading volume occurs during London business hours, from approximately 3:00 a.m. E.T. time to approximately 12:00 p.m. E.T. Some limited trading takes place during Asian business hours as well (12:00 a.m.–3:00 a.m. E.T.).

Exchanges have a cutoff time of 1:00 p.m. E.T. for clearing the respective day's trades (SGX clears Freight Futures from 7:00 p.m. E.T. to 3:00 a.m. E.T.). The final closing prices for settlement are published daily around 1:30 p.m. E.T. Final cash settlement occurs the first business day following the expiry day.

Freight Futures are quoted in U.S. Dollars per day, with a minimum lot size of one. One lot represents one day of freight costs, as freight rates are measured in U.S. Dollars per day. The nominal value of a contract is simply the product of lots and Freight Futures prices. There are Futures Contracts of up to 72 consecutive months, starting with the current month, available for trading for each vessel class.

Similar to other futures, Freight Futures are subject to margin requirements by the relevant exchanges. The Sponsor anticipates that approximately 10% to 40% of the Fund's assets will be used as payment for or collateral for Freight Futures contracts. In order to collateralize its Freight Futures positions, the Fund will hold such assets, from which it will post margin to its FCM in an amount equal to the margin required by the relevant

exchanges, and transfer to its FCM any additional amounts that may be separately required by the FCM.

According to the Registration Statement, most of the daily trading takes place over phones and instant messaging platforms.¹⁰ Trading screens also exist and some trading also happens through such screens. Brokers are required to report to the relevant exchanges each trade that takes place. Freight Futures liquidity has remained relatively constant, in lot terms, over the last five years with approximately 1.1 million lots trading annually. Open interest currently stands at approximately 290,000 lots across all asset classes representing an estimated value of more than \$3 billion. Of such open interest, Capesize contracts account for approximately 50%, Panamax for approximately 40% and Handymax for approximately 10%. Major market participants in Freight Futures market include: Commodity producers, commodity users, commodity trading houses, ship operators, major banks, investment funds and independent ship owners.

Calculating Net Asset Value ("NAV")

The Fund's NAV will be calculated by taking the current market value of its total assets, subtracting any liabilities; and dividing that total by the total number of outstanding Shares.

The Administrator will calculate the NAV of the Fund once each NYSE Arca trading day. The NAV for a particular trading day will be released after 4:00 p.m. E.T. The Administrator will use the Baltic Exchange closing price for the Freight Futures, but will calculate or determine the value of all other Fund investments using market quotations, if available, or other information customarily used to determine the fair value of such investments as of the earlier of the close of the NYSE Arca Core Trading Session (normally 4:00 p.m. E.T.). The information may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilized. Third parties supplying quotations or market data may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

¹⁰ Freight Futures are primarily traded through broker members of the Forward Freight Agreement Brokers Association ("FFABA"), such as Clarkson's Securities, Simpson Spence Young, Freight Investor Services, GFI Group, BRS Group and ICAP.

Indicative Fund Value

In order to provide updated information relating to the Fund for use by investors and market professionals, an updated indicative fund value ("IFV") will be made available through on-line information services throughout the Exchange Core Trading Session (normally 9:30 a.m. to 4:00 p.m., E.T.) on each trading day. The IFV will be calculated by using the prior day's closing NAV per Share of the Fund as a base and updating that value throughout the trading day to reflect changes in the most recently reported trade price for the futures and/or options held by the Fund. The IFV disseminated during NYSE Arca Core Trading Session hours should not be viewed as an actual real time update of the NAV, because the NAV will be calculated only once at the end of each trading day based upon the relevant end of day values of the Fund's investments.

The IFV will be disseminated on a per Share basis every 15 seconds during regular NYSE Arca Core Trading Session hours of 9:30 a.m. E.T. to 4:00 p.m. E.T. The customary trading hours of the Freight Futures trading are 3:00 a.m. E.T. to 12:00 p.m. E.T. This means that there is a gap in time at the end of each day during which the Fund's Shares will be traded on the NYSE Arca, but real-time trading prices for contracts are not available. During such gaps in time the IFV will be calculated based on the end of day price of such contracts from the Baltic Exchange's immediately preceding trading session. In addition, other investments and U.S. Treasuries held by the Fund will be valued by the Administrator using rates and points received from client-approved third party vendors (such as Reuters and WM Company) and broker-dealer quotes. These investments will not be included in the IFV.

Dissemination of the IFV provides additional information that is not otherwise available to the public and is useful to investors and market professionals in connection with the trading of the Fund's Shares on the NYSE Arca. Investors and market professionals are able throughout the trading day to compare the market price of Fund Shares and the IFV. If the market price of the Fund Shares diverges significantly from the IFV, market professionals will have an incentive to execute arbitrage trades. For example, if the Fund's Shares appears to be trading at a discount compared to the IFV, a market professional could buy the Fund's Shares on the NYSE Arca and take the opposite position in Freight Futures. Such arbitrage trades can

tighten the tracking between the market price of the Fund's Shares and the IFV and thus can be beneficial to all market participants.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will create and redeem Shares from time to time in one or more "Creation Baskets" or "Redemption Baskets" (collectively, the "Baskets"). A Basket consists of 50,000 Shares. The creation and redemption of Baskets will only be made in exchange for delivery to the Fund or the distribution by the Fund of the amount of Treasuries and any cash represented by the Baskets being created or redeemed, the amount of which is based on the combined NAV of the number of Shares included in the Baskets being created or redeemed determined as of 4:00 p.m. E.T. on the day the order to create or redeem Baskets is properly received.

"Authorized Participants" are the only persons that may place orders to create and redeem Baskets. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions described below, and (2) Depository Trust Company ("DTC") participants.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Transfer Agent to create one or more Baskets. For purposes of processing purchase and redemption orders, a "business day" means any day other than a day when any of the NYSE Arca, the Baltic Exchange or the New York Stock Exchange is closed for regular trading. Purchase orders must be placed by 1:00 p.m. E.T. or the close of the Core Trading Session on NYSE Arca, whichever is earlier. The day on which a valid purchase order is received in accordance with the terms of the "Authorized Participant Agreement" is referred to as the purchase order date. Purchase orders are irrevocable.

Determination of Required Payment

The total payment required to create each Creation Basket is the NAV of 50,000 Shares on the purchase order date, but only if the required payment is timely received. To calculate the NAV, the Administrator will use the Baltic Exchange settlement price (typically determined after 2:00 p.m. E.T.) for the Freight Futures. Because orders to purchase Baskets must be placed no later than 1:00 p.m., E.T., but

the total payment required to create a Basket typically will not be determined until after 2:00 p.m., E.T., on the date the purchase order is received, Authorized Participants will not know the total amount of the payment required to create a Basket at the time they submit an irrevocable purchase order.

Delivery of Required Payment

An Authorized Participant who places a purchase order shall transfer to the Administrator the required amount of Freight Futures, U.S. Treasuries and/or cash, or a combination of them, by the end of the next business day following the purchase order date. Upon receipt of the deposit amount, the Administrator will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account on the next business day following the purchase order date.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Baskets will mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Transfer Agent, and accepted by the Distributor, to redeem one or more Baskets. Redemption orders must be placed by 1:00 p.m. E.T. or the close of the Core Trading Session on the NYSE Arca, whichever is earlier. A redemption order so received will be effective on the date it is received in satisfactory form in accordance with the terms of the Authorized Participant Agreement. The day on which the Marketing Agent receives a valid redemption order is the redemption order date. Redemption orders are irrevocable. By placing a redemption order, an Authorized Participant agrees to deliver the baskets to be redeemed through DTC's book-entry system to the Fund not later than 1:00 p.m., E.T., on the next business day immediately following the redemption order date.

Determination of Redemption Proceeds

The redemption proceeds from the Fund will consist of a cash redemption amount equal to the NAV of the number of Baskets requested in the Authorized Participant's redemption order on the redemption order date.

Because orders to redeem Baskets must be placed no later than 1:00 p.m., E.T., but the total amount of redemption proceeds typically will not be determined until after 2:00 p.m., E.T., on the date the redemption order is received, Authorized Participants will

not know the total amount of the redemption proceeds at the time they submit an irrevocable redemption order.

The redemption proceeds due from the Fund will be delivered to the Authorized Participant at 1:00 p.m., E.T., on the next business day immediately following the redemption order date if, by such time, the Fund's DTC account has been credited with the Baskets to be redeemed.

Availability of Information

The NAV for the Fund's Shares will be disseminated daily to all market participants at the same time. The intraday, closing prices, and settlement prices of the Freight Futures will be readily available from the applicable futures exchange Web sites, automated quotation systems, published or other public sources, or major market data vendors.

Complete real-time data for Freight Futures is available by subscription through on-line information services. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA"). The IFV will be available through on-line information services. The Freight Futures trading prices will be disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. E.T. Nasdaq OMX-Stockholm AB, SGX, CME, ICE Futures US and EEX provide on a daily basis, transaction volumes, transaction prices, trade time, and open interest on their respective Web sites. In addition, historical data also exists for volumes and open interest. Daily settlement prices and historical settlement prices are available through a subscription service to the Baltic Exchange, which maintains the licensing rights of relevant freight data. However, the exchanges provide the daily settlement price change of Freight Futures on their respective Web sites. Certain Freight Futures brokers provide real time pricing information to the general public either through their Web sites or through data vendors such as Bloomberg or Reuters. Most Freight Futures brokers provide, upon request, individual electronic screens that market participants can use to transact, place orders or only monitor Freight Futures market price levels.

In addition, the Fund's Web site, www.drybulkETF.com, will display the applicable end of day closing NAV. The Freight Futures currently constituting the Benchmark Portfolio, as well as the daily holdings of the Fund will be available on the Fund's Web site. The

daily holdings of the Benchmark Portfolio and the Fund will be available on the Fund's Web site before 9:30 a.m. E.T. each day. The Web site disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the composite value of the total portfolio, (ii) the quantity and type of each holding (including the ticker symbol, maturity date or other identifier, if any) and other descriptive information including, in the case of an option, its strike price, (iii) the value of each Freight Futures (in U.S. dollars), (iv) the type (including maturity, ticker symbol, or other identifier) and value of each Treasury security and cash equivalent, and (v) the amount of cash held in the Fund's portfolio. The Fund's Web site will be publicly accessible at no charge.

The daily closing Benchmark Portfolio level and the percentage change in the daily closing level for the Benchmark Portfolio will be publicly available from one or more major market data vendors. The intraday value of the Benchmark Portfolio, updated every 15 seconds, will also be available through major market data vendors.

This Web site disclosure of the Benchmark Portfolio's and the Fund's daily holdings will occur at approximately the same time as the disclosure by the Trust of the daily holdings to Authorized Participants so that all market participants are provided daily holdings information at approximately the same time. Therefore, the same holdings information will be provided on the public Web site as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current daily holdings of the Fund through the Fund's Web site.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.¹¹ Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares of the Fund inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Benchmark Portfolio occurs. If the interruption to the dissemination of the IFV, or the value of the Benchmark Portfolio persists past the trading day in which it occurred, the Exchange will

¹¹ See NYSE Arca Rule 7.12-E.

halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.200–E. The trading of the Shares will be subject to NYSE Arca Rule 8.200–E, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (“ETP”) Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. The Exchange represents that, for initial and/or continued listing, the Funds will be in compliance with Rule 10A–3¹² under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.¹³ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares of the Funds in all

trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Freight Futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and Freight Futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and Freight Futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (“CSSA”).¹⁴

Not more than 10% of the net assets of the Fund in the aggregate invested in Freight Futures shall consist of Freight Futures whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolios, (b) limitations on portfolio holdings or reference assets, or (c) applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will

commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (3) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) how information regarding portfolio holdings is disseminated; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund will receive a prospectus. ETP Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over the trading of Freight Futures traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Shares and that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day. The Information Bulletin will disclose that information about the Shares will be publicly available on the Fund's Web site.

Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Rule 9.2–E(a) in an Information Bulletin. Specifically, ETP Holders will be

¹² 17 CFR 240.10A–3.

¹³ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

¹⁴ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

reminded in the Information Bulletin that, in recommending transactions in the Shares, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such ETP Holder, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that ETP Holders must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such ETP Holder or registered representative in making recommendations to the customer.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁵ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.200-E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares of the Fund in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Freight Futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and Freight Futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and Freight Futures from markets and other entities that are members of ISG or with which the

Exchange has in place a CSSA.¹⁶ Not more than 10% of the net assets of the Fund in the aggregate invested in Freight Futures shall consist of Freight Futures whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA. The Exchange will make available on its Web site daily trading volume of each of the Shares, closing prices of such Shares, and number of Shares outstanding. The intraday, closing prices, and settlement prices of Freight Futures will be readily available from the Baltic Exchange Web site, automated quotation systems, published or other public sources, or on-line information services.

Complete real-time data for the Freight Futures is available by subscription from on-line information services. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be available through on-line information services. The Freight Futures trading prices will be disseminated by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. E.T. Nasdaq OMX-Stockholm AB, SGX, CME, ICE Futures US and EEX provide on a daily basis, transaction volumes, transaction prices, trade time, and open interest on their respective Web sites. In addition, the Fund's Web site, will display the applicable end of day closing NAV. The daily holdings of the Fund will be disclosed on the Fund's Web site before 9:30 a.m. E.T. each day. The daily holdings of the Fund will be available on the Fund's Web site before 9:30 a.m. E.T. each day. The Fund's Web site disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the composite value of the total portfolio, (ii) the quantity and type of each holding (including the ticker symbol, maturity date or other identifier, if any) and other descriptive information including, in the case of an option, its strike price, (iii) the value of each Freight Futures (in U.S. dollars), (iv) the type (including maturity, ticker symbol, or other identifier) and value of each Treasury security and cash held in the Fund's portfolio.

Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with

¹⁶ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the funds may trade on markets that are members of ISG or with which the Exchange has in place a CSSA

trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of Trust Issued Receipts based on Freight Futures that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of a new type of Trust Issued Receipts based on Freight Futures and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

¹⁵ 15 U.S.C. 78f(b)(5).

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–2017–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2017–107. 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–2017–107, and should be submitted on or before October 19, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017–20751 Filed 9–27–17; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15291 and #15292; TEXAS Disaster Number TX–00488]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4332–DR), dated 09/04/2017.

Incident: Hurricane Harvey.
Incident Period: 08/23/2017 through 09/15/2017.

DATES: Issued on 09/19/2017.
Physical Loan Application Deadline Date: 11/03/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 06/04/2018.

ADDRESSES: 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: The notice of the President’s major disaster declaration for Private Non-Profit organizations in the State of Texas, dated 09/04/2017, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Austin, Bastrop, Burleson, Grimes, Lee, Madison, Washington

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,
Associate Administrator for Disaster Assistance.

[FR Doc. 2017–20742 Filed 9–27–17; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15322 and #15323; PUERTO RICO Disaster Number PR–00031]

Presidential Declaration of a Major Disaster for the Commonwealth of Puerto Rico

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4339–DR), dated 09/20/2017.

Incident: Hurricane Maria.
Incident Period: 09/17/2017 and continuing.

DATES: Issued on 09/20/2017.
Physical Loan Application Deadline Date: 11/20/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 06/20/2018.

ADDRESSES: 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 President’s major disaster declaration on 09/20/2017, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Municipalities (Physical Damage and Economic Injury Loans): Aguas Buenas, Aibonito, Arecibo, Arroyo, Barceloneta, Barranquitas, Bayamon, Caguas, Canovanas, Carolina, Catano, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerio, Corozal, Culebra, Dorado, Fajardo, Florida, Guayama, Guaynabo, Gurabo, Humacao, Jayuya, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Maunabo, Morovis, Naguabo, Naranjito, Orocovis, Patillas, Ponce, Rio Grande, Salinas, San Juan, San Lorenzo, Santa Isabel, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Vieques, Villalba, Yabucoa

Contiguous Municipalities (Economic Injury Loans Only): Adjuntas, Hatillo, Lares, Penuelas

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	3.500
Homeowners without Credit Available Elsewhere	1.750
Businesses with Credit Available Elsewhere	6.610
Businesses without Credit Available Elsewhere	3.305

¹⁷ 17 CFR 200.30–3(a)(12).

	Percent
Non-Profit Organizations with Credit Available Elsewhere ...	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.305
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 153228 and for economic injury is 153230.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017-20737 Filed 9-27-17; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15293 and #15294; U.S. VIRGIN ISLANDS Disaster Number VI-00009]

Presidential Declaration Amendment of a Major Disaster for the U.S. Virgin Islands

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the U.S. Virgin Islands (FEMA-4335-DR), dated 09/07/2017.

Incident: Hurricane Irma.

Incident Period: 09/05/2017 through 09/07/2017.

DATES: Issued on 09/18/2017.

Physical Loan Application Deadline Date: 11/06/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 06/07/2018.

ADDRESSES: 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: The notice of the President's major disaster declaration for the U.S. Virgin Islands, dated 09/07/2017, is hereby amended to establish the incident period for this disaster as beginning 09/05/2017 through 09/07/2017.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017-20744 Filed 9-27-17; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15312 and #15313; U.S. VIRGIN ISLANDS Disaster Number VI-00010]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the U.S. Virgin Islands

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the U.S. Virgin Islands (FEMA-4335-DR), dated 09/15/2017.

Incident: Hurricane Irma.

Incident Period: 09/05/2017 through 09/07/2017.

DATES: Issued on 09/18/2017.

Physical Loan Application Deadline Date: 11/14/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 06/15/2018.

ADDRESSES: 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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the U.S. Virgin Islands, dated 09/15/2017, is hereby amended to establish the incident period for this disaster as beginning 09/05/2017 through 09/07/2017.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017-20739 Filed 9-27-17; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15320 and #15321; U.S. VIRGIN ISLANDS Disaster Number VI-00011]

Presidential Declaration of a Major Disaster for the U.S. Virgin Islands

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the U.S. Virgin Islands (FEMA-4340-DR), dated 09/20/2017.

Incident: Hurricane Maria.

Incident Period: 09/16/2017 and continuing.

DATES: Issued on 09/20/2017.

Physical Loan Application Deadline Date: 11/20/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 06/20/2018.

ADDRESSES: 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 President's major disaster declaration on 09/20/2017, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas (Physical Damage and Economic Injury Loans): Saint Croix Contiguous Counties (*Economic Injury Loans Only*): None

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners With Credit Available Elsewhere	3.500
Homeowners Without Credit Available Elsewhere	1.750
Businesses With Credit Available Elsewhere	6.610
Businesses Without Credit Available Elsewhere	3.305
Non-Profit Organizations With Credit Available Elsewhere ...	2.500
Non-Profit Organizations Without Credit Available Elsewhere	2.500
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.305

	Percent
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 153208 and for economic injury is 153210.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017-20731 Filed 9-27-17; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15298 and #15299; PUERTO RICO Disaster Number PR-00029]

Presidential Declaration Amendment of a Major Disaster for the Commonwealth of Puerto Rico

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA-4336-DR), dated 09/10/2017.

Incident: Hurricane Irma.

Incident Period: 09/05/2017 through 09/07/2017.

DATES: Issued on 09/18/2017.

Physical Loan Application Deadline Date: 11/09/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 06/11/2018.

ADDRESSES: 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: The notice of the President's major disaster declaration for the Commonwealth of Puerto Rico, dated 09/10/2017, is hereby amended to establish the incident period for this disaster as beginning 09/05/2017 through 09/07/2017.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017-20735 Filed 9-27-17; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15300 and #15301; Puerto Rico Disaster Number PR-00030]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the Commonwealth of Puerto Rico

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA-4336-DR), dated 09/10/2017.

Incident: Hurricane Irma.

Incident Period: 09/05/2017 through 09/07/2017.

DATES: Issued on 09/18/2017.

Physical Loan Application Deadline Date: 11/09/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 06/11/2018.

ADDRESSES: 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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Puerto Rico, dated 09/10/2017, is hereby amended to establish the incident period for this disaster as beginning 09/05/2017 through 09/07/2017.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2017-20746 Filed 9-27-17; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 10144]

Certification Related to the Central Government of Haiti of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017

Pursuant to section 7045(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017 (Div. J, Pub. L. 115-31), I hereby certify that the central Government of Haiti is taking effective steps, which are in addition to steps taken since the certification and report submitted on April 4, 2016, if applicable, to:

- Strengthen the rule of law in Haiti, including by selecting judges in a transparent manner based on merit; reducing pre-trial detention; respecting the independence of the judiciary; and improving governance by implementing reforms to increase transparency and accountability, including through the penal and criminal codes;
- combat corruption, including by implementing the anti-corruption law enacted in 2014 and prosecuting corrupt officials;
- increase government revenues, including by implementing tax reforms, and increase expenditures on public services; and
- resolve commercial disputes between United States entities and the Government of Haiti.

Rex Tillerson,

Secretary of State.

[FR Doc. 2017-20774 Filed 9-27-17; 8:45 am]

BILLING CODE 4710-29-P

DEPARTMENT OF STATE

[Public Notice: 10145]

30-Day Notice of Proposed Information Collection: Certificate of Eligibility for Exchange Visitor Status (J-NONIMMIGRANT)

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to October 30, 2017.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email:* oira_submission@omb.eop.gov. You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

- *Fax:* 202-395-5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to G. Kevin Saba, Director, Office of Policy and Program Support, ECA/EC, SA-5, Floor 5, U.S. Department of State, 2200 C Street NW., Washington, DC 20522-0505, who may be reached at JExchanges@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Certificate of Eligibility for Exchange Visitor Status (J-NONIMMIGRANT).

- *OMB Control Number:* 1405-0119.
- *Type of Request:* Revision of a Currently Approved Collection.

- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Policy and Program Support (ECA/EC).

- *Form Number:* DS-2019.

- *Respondents:* U.S. Department of State designated sponsors.

- *Estimated Number of Respondents:* 1,500.

- *Estimated Number of Responses:* 325,000.

- *Average Time per Response:* 45 minutes.

- *Total Estimated Burden Time:* 243,750 hours.

- *Frequency:* On occasion.

- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the

use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J-Nonimmigrant) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended (22 U.S.C. 2451 *et seq.*). The Form DS-2019 is the document that provides the information needed to identify an individual (and spouse and dependents, where applicable) seeking to enter the U.S. as an Exchange Visitor in J-Nonimmigrant status. Changes have been made to Section 6 of the DS-2019 to include a responsible officer/alternate responsible officer attestation that the sponsor has complied with requirements in 22 CFR 62.12(b). In the instructions to Form DS-2019, Section 2 of the instructions has been reworded to ensure that exchange visitors and their accompanying spouses and dependents remain in compliance with insurance requirements under 22 CFR 62.14 during the course of the exchange.

Methodology

Access to Form DS-2019 is made available to Department-designated sponsors electronically via the Student and Exchange Visitor Information System (SEVIS).

G. Kevin Saba,

Director, Office of Policy and Program Support Office of Private Sector Exchange, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2017-20701 Filed 9-27-17; 8:45 am]

BILLING CODE 4710-05-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36144]

Scrap Metal Services Terminal Railroad Company (Illinois), LLC—Lease and Operation Exemption—Rail Line of Scrap Metal Services, LLC

Scrap Metal Services Terminal Railroad Company (Illinois), LLC (SMSRRIL), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease from Scrap Metal Services, LLC (SMS), and to

operate,¹ approximately 1,613 linear feet (0.305 mile) of railroad right-of-way and trackage located at the Burnham Transload Facility at the intersection of Brainard Avenue and the Indiana Harbor Belt Railroad right-of-way in Burnham, Ill. (the Burnham Transload Facility trackage), pursuant to an agreement. SMS Realty (Burnham), LLC, owns the Burnham Transload Facility trackage, which is leased to SMS.

According to SMSRRIL, there are no mileposts associated with the Burnham Transload Facility trackage. SMSRRIL states that the trackage is used in conjunction with interchanging to and from Indiana Harbor Belt Railroad carloads of scrap metals for transloading into trucks for delivery to steel producing mills.

SMSRRIL asserts that, because the trackage in question will constitute the entire line of railroad of SMSRRIL, this trackage is a line of railroad under 49 U.S.C. 10901, rather than spur, switching, or side tracks excepted from Board acquisition and operation authority by virtue of 49 U.S.C. 10906.²

Although SMSRRIL states in its verified notice that the operations were proposed to be consummated on or about September 1, 2017, this transaction may not be consummated until October 12, 2017 (30 days after the verified notice was filed).

SMSRRIL certifies that its projected annual revenues as a result of this transaction do not exceed those that would qualify it as a Class III rail carrier and will not exceed \$5 million. SMSRRIL also certifies that there are no provisions or agreements that may limit future interchange commitments.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than October 5, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36144, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on SMSRRIL's representative, David C. Dillon, Dillon & Nash, Ltd.,

¹ A draft copy of the operating agreement was submitted with the notice of exemption.

² See *Effingham R.R.—Pet. for Declaratory Order—Constr. at Effingham, Ill.*, 2 S.T.B. 606, 609-10 (STB served Sept. 12, 1997), *aff'd sub nom. United Transp. Union-Illinois Legislative Bd. v. STB*, 183 F.3d 606 (7th Cir. 1999).

3100 Dundee Road, Suite 508,
Northbrook, IL 60062.

According to SMSRRIL, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at “WWW.STB.GOV.”

Decided: September 25, 2017.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Kenyatta Clay,
Clearance Clerk.

[FR Doc. 2017–20784 Filed 9–27–17; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighty Sixth RTCA SC–147 Plenary Session

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Eighty Sixth RTCA SC–147 Plenary Session.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Eighty Sixth RTCA SC–147 Plenary Session. This is a subcommittee to RTCA.

DATES: December 7, 2017.

ADDRESSES: The meeting will be held at: Johns Hopkins Applied Physics Laboratory at 11100 Johns Hopkins Rd, Laurel, MD 20723.

FOR FURTHER INFORMATION CONTACT: Al Secen at asecen@rtca.org or 202–330–0647, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Eighty Sixth RTCA SC–147 Plenary Session. The agenda will include the following:

December 7, 2017

1. Opening Plenary Session—Co-Chairs
 - a. Chairmen’s Opening Remarks/ Introductions
 - b. RTCA Federal Advisory Act and Proprietary Material Policies Review
 - c. Approval of Minutes From 85th Meeting of SC–147
 - d. Approval of Minutes From September 2017 Joint Working Group Meeting

- e. Approval of Agenda
- f. Future Meeting Scheduling
2. Report From WG–75
3. SESAR Updates
4. Working Group Report
 - a. Report From Coordination Subgroup
 - b. Report From Threat Resolution Working Group
 - c. Report From Surveillance Working Group
 - d. Report From ACAS Xu Subgroup
5. CAS Interoperability MASPS: Status, Schedule, and SC–147 TORS
6. Status Of Mitigations for Transponder Failures
7. ACAS Xa/Xo MOPS Status & Approval to conduct Final Review and Comment (FRAC) Process
8. Other Business
9. New Business

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on September 25, 2017.

Mohannad Dawoud,

*Management and Program Analyst,
Partnership Contracts Branch, ANG–A17,
NextGen, Procurement Services Division,
Federal Aviation Administration.*

[FR Doc. 2017–20827 Filed 9–27–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Cancellation of Preparation of Environmental Impact Statement for Replacement General Aviation Airport, Mesquite, Clark County, Nevada

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of cancellation of preparation of Environmental Impact Statement.

SUMMARY: The Federal Aviation Administration (FAA) announces that it has discontinued preparation of an Environmental Impact Statement (EIS) for a construction of a Replacement General Aviation Airport for Mesquite, Nevada. On November 14, 2011, FAA published a notice of suspension of the EIS in the **Federal Register** (76 FR 70530). The FAA received a letter dated September 27, 2011, from the City of

Mesquite, Nevada asking the FAA to suspend any further work on the EIS. The reasons for this action include the local economic conditions in Mesquite and other local fiscal and budgetary constraints. The Mesquite Lands Act of 1988 (the Act), as amended, provided land to the City of Mesquite for the replacement airport, expired on November 14, 2011 and was not extended or renewed by Congress. The original purpose and need for the proposed relocated airport no longer exists. The City of Mesquite, the owner and operator of the existing Mesquite Municipal Airport, has not included a replacement airport in its 5-year Airport Capital Improvement Program. As a result, FAA has determined the proposed replacement General Aviation Airport for Mesquite, Nevada is not ripe for decision at this time.

FOR FURTHER INFORMATION CONTACT:

David B. Kessler, AICP, Regional Environmental Protection Specialist, AWP–610.1, Airports Division, Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Lawndale, California 90261, Telephone: 310–725–3615.

SUPPLEMENTARY INFORMATION:

On December 8, 2004, the Federal Aviation Administration (FAA) issued a Notice of Intent in the **Federal Register** (69 FR 71097) to prepare an EIS for the proposed construction and operation of a Replacement General Aviation (GA) Airport, for the City of Mesquite, in eastern Clark County, Nevada. The City of Mesquite proposed to build the replacement airport south of Interstate Highway 15 between Exit 108 and 109 on the Mormon Mesa, about 15 miles west of the existing Mesquite Municipal Airport and change the airport land use to residential land use, including construction of a new arterial roadway through the existing airport property. To maintain access to the National Air Transportation System, the city also proposed to design, fund, and build a replacement GA airport at Mormon Mesa that would provide GA facilities and services to the flying public, support regional economic development at no cost to the FAA. The City proposed to build the replacement GA airport to meet FAA Airport Reference Code (ARC) B–II standards with a new runway 7,500 feet long by 100 feet wide. On May 16, 2008, the Notice of Availability of FAA’s Draft EIS was published in the **Federal Register** (73 FR 28461). The FAA received 34 comment letters on the Draft EIS from federal, state and local agencies, as well as the general public. In March 2009, as FAA was preparing responses to

comments received on the 2008 Draft EIS, FAA determined there were significant new circumstances or information relevant to environmental concerns and bearing on the Proposed Project or its impacts. Consistent with Title 40 CFR 1501.9, FAA decided to prepare a Revised Draft Environmental Impact Statement (RDEIS).

On September 27, 2011, the FAA received a letter from the City of Mesquite, asking the FAA to suspend any additional work on the EIS for the proposed Replacement GA Airport EIS. The City of Mesquite explained the postponement was based on local economic conditions and other local fiscal and budgetary constraints.

On November 14, 2011, FAA published a notice of Suspension of the EIS in the **Federal Register** (76 FR 70530). In 2014, the FAA provided a grant of funds to the City of Mesquite to install weather reporting equipment at the existing Mesquite Municipal Airport. In 2015, FAA provided a grant of funds to the City of Mesquite to update its Airport Master Plan. The City completed its Master Plan in the June 2017. The City did not include a replacement airport proposal in its 5-year Airport Capital Improvement Program provided to the FAA.

The Mesquite Lands Act of 1988, as amended (Pub. L. 99-549) provided the City with the opportunity to select a specified number of acres of federal land managed by the Bureau of Land Management to build a replacement airport on the Mormon Mesa. Since Public Law 99-549 expired, the federal land on the Mormon Mesa for the replacement airport is no longer available. The original purpose and need to change the land use of the existing airport to residential land use and replace the airport no longer exists. There is no demonstrated aeronautical need for the replacement airport and the information in the 2008 Draft EIS is also no longer valid. Thus, FAA is terminating this EIS.

Issued in Hawthorne, California, on September 19, 2017.

Mark A. McClardy,

Director, Office of Airports, Western-Pacific Region, AWP-600.

[FR Doc. 2017-20839 Filed 9-27-17; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty Seventh RTCA SC-222 Plenary

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

ACTION: Twenty Seventh RTCA SC-222 Plenary.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Twenty Seventh RTCA SC-222 Plenary. This is a subcommittee to RTCA.

DATES: The meeting will be held November 2, 2017 08:00 a.m.–10:00 a.m.

ADDRESSES: The meeting will be held Virtually: <https://dfs.webex.com/dfs-en/j.php?MTID=md423e5bbfcb25c1fd3c2a8257213ba2>, Join by phone, 1-855-299-5224 Call-in toll-free number (US/Canada), 1-631-267-4890 Call-in toll number (US/Canada), Access Code: 956 003 877, Password: Wm2fKCdV.

FOR FURTHER INFORMATION CONTACT:

Karan Hofmann at khofmann@rtca.org or 202-330-0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833-9339, fax at (202) 833-9434, or Web site at <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.), notice is hereby given for a meeting of the Twenty Seventh RTCA SC-222 Plenary. The agenda will include the following:

Thursday, November 2, 2017—8:00 a.m.–10:00 a.m.

1. Welcome, Introductions, Administrative Remarks by Special Committee Leadership
2. Agenda Overview
3. Review/Approve prior Plenary meeting Summary—(action item status)
4. Iridium Technical Discussion
5. Ligado Effects (Possible ISRA with SC-159)
6. Discussion of additional SatCom Class B Work
7. SC-228 IRSA Discussion
8. Detailed Work Plan for SC-222 and WG-82
9. Establish Agenda, Date and Place for next meeting
10. Review of Action Items
11. Adjourn—Plenary meeting

1. Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting.

Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time. Issued in Washington, DC on September 25, 2017.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG-A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2017-20794 Filed 9-27-17; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA PMC Program Management Committee Meeting

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: RTCA PMC Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Program Management Committee Meeting. This is a subcommittee to RTCA.

DATES: The meeting will be held on December 19, 2017 08:30 a.m.–4:30 p.m.

ADDRESSES: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT:

Karan Hofmann at khofmann@rtca.org or 202-330-0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833-9339, fax at (202) 833-9434, or Web site at <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.), notice is hereby given for a meeting of the RTCA Program Management Committee Meeting. The agenda will include the following:

Tuesday, December 19, 2017—8:30 a.m.–4:30 p.m.

1. Welcome and Introductions
2. Review/Approve
 - A. Meeting Summary September 21, 2017
 - B. Administrative SC TOR Revisions
3. Publication Consideration/Approval
 - A. New Document—*Guidelines for In Situ Eddy Dissipation Rate (EDR) Algorithm Performance*, Prepared

- By SC-206 (Aeronautical Information and Meteorological Data Link Services)
- B. New Document—*MASPS for Synthetic Vision System for Attitude Awareness to Address Cast SE 22*, Prepared By SC-213 (Enhanced Flight Vision Systems/ Synthetic Vision Systems)
- C. Revision to DO-230G—*Standards for Airport Security Access Control Systems*, Prepared By SC-224 (Standards for Airport Security Access Control Systems)
- D. New Document—*C2 Data Link Minimum Aviation System Performance Standards (MASPS) (SATCOM)*, Prepared By SC-228 (Minimum Performance Standards for UAS)
- E. New Document—*Addressing Human Factors/Pilot Interface Issues for Avionics*, Prepared By SC-233 (Addressing Human Factors/Pilot Interface Issues for Avionics)
- F. New Document—*GNSS Dual-Frequency (1575/1176 MHz) Antenna Minimum Operational Performance Standards for Airborne Equipment*, Prepared By SC-159 (Navigation Equipment Using the Global Navigation Satellite System (GNSS))
- G. Revision to DO-235B—*Assessment of Radio Frequency Interference Relevant to the GNSS L1 Frequency Band*, Prepared By SC-159 (Navigation Equipment Using the Global Navigation Satellite System (GNSS))
4. Integration and Coordination Committee (ICC)
5. Cross Cutting Committee (CCC)
6. Past Action Item Review
7. Discussion
- A. NAC—Status Update
- B. TOC—Status Update
- C. DAC—Status Update
- D. FAA Actions Taken on Previously Published Documents—Report
- E. Special Committees—Chairmen's Reports and Active Inter-Special Committee Requirements Agreements (ISRA)—Review
- F. European/Eurocae Coordination—Status Update
8. Documents Open for Final Review and Comment
9. Other Business
10. Schedule for Committee Deliverables and Next Meeting Date
11. New Action Item Summary

1. Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons

wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on September 25, 2017.

Mohannad Dawoud,

Management and Program Analyst, Partnership Contracts Branch, ANG-A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2017-20828 Filed 9-27-17; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Forty Ninth RTCA SC-206 Plenary

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

ACTION: Forty Ninth RTCA SC-206 Plenary.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Forty Ninth RTCA SC-206 Plenary. This is a subcommittee to RTCA.

DATES: The meeting will be held December 4-8, 2017, 8:30 a.m.-5:00 p.m.

ADDRESSES: The meeting will be held at: Harris Corporation, 2235 Monroe Street, Herndon, VA 20170.

FOR FURTHER INFORMATION CONTACT:

Karan Hofmann at khofmann@rtca.org or 202-330-0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833-9339, fax at (202) 833-9434, or Web site at <http://www.rtca.org>. Pre-registration is required.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.), notice is hereby given for a meeting of the Forty Ninth RTCA SC-206 Plenary. The agenda will include the following:

Monday, December 4, 2017—8:30 a.m.-5:00 p.m.

1. Opening Plenary
2. Opening remarks: DFO, RTCA, and Chairman
3. Attendees' introductions
4. Review and approval of meeting agenda
5. Approval of previous meeting minutes (Washington, DC)
6. Action item review
7. Sub-Groups reports:

- a. SG1: CSC JC and Other SC Coordination (ISRAs)
- b. SG4: EDR Guidelines
- c. SG5: FIS-B MOPS
8. Decision on rejoining with WG-76
9. Industry presentations
10. Sub-Group meetings

Tuesday, December 5, 2017—8:30 a.m.-5:00 p.m.

Sub-Groups meetings

Wednesday, December 6, 2017—8:30 a.m.-5:00 p.m.

Sub-Groups meetings

Thursday, December 7, 2017—8:30 a.m.-5:00 p.m.

Sub-Groups meetings

Friday, December 8, 2017—8:30 a.m.-11:00 a.m.

1. Closing Plenary
2. Sub-Groups reports
3. Future meeting plans and dates
4. Industry coordination
5. Action item review
6. Other business
7. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on September 25, 2017.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG-A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2017-20795 Filed 9-27-17; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifty Second RTCA SC-224 Plenary

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

ACTION: Fifty Second RTCA SC-224 Plenary.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Fifty Second RTCA SC-224 Plenary. This is a subcommittee to RTCA.

DATES: The meeting will be held October 24, 2017, 10:00 a.m.-1:00 p.m.

ADDRESSES: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT:

Karan Hofmann at khofmann@rtca.org or 202-330-0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833-9339, fax at (202) 833-9434, or Web site at <http://www.rtca.org>.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.), notice is hereby given for a meeting of the Fifty Second RTCA SC-224 Plenary. The agenda will include the following:

Tuesday, October 24, 2017—10:00 a.m.–1:00 p.m.

1. Welcome/Introductions/
Administrative Remarks
2. Review/Approve Previous Meeting
Summary
3. Report on TSA participation
4. Report on Document Distribution
Mechanisms.
5. Report on the New Guidelines and
other Safe Skies Reports
6. Discussion on DO-230I
7. TOR Changes
8. Action Items for Next Meeting
9. Time and Place of Next Meeting
10. Any Other Business
11. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on September 25, 2017.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG-A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2017-20826 Filed 9-27-17; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Revised Notice of Land Use Change and Release of Grant Assurance Restrictions at the Sacramento International Airport (SMF), Sacramento, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Revised notice of a non-aeronautical land-use change.

SUMMARY: This Notice revises “Notice of Land Use Change and Release of Grant Assurance Restrictions at the Sacramento International Airport”, June 14, 2016, Page 38772. The previous Notice proposed to rule and invite public comment on the application for a land-use change for approximately 31.1 acres of airport property at Sacramento International Airport (SMF), California. The parcel size has changed from 31.1 acres to approximately 35.32 acres of airport property. The land use change will allow airport land to be released from the aeronautical use provisions of the Grant Assurances that require it to serve an airport purposes since the land is not needed for aeronautical uses. The reuse of the land for energy generating solar arrays represents a compatible land use that will not interfere with the airport or its operations. The solar generated electricity will benefit the airport by producing a market return on the land while reducing electrical costs. Cost savings will equal or exceed the fair market rental value of the land occupied by the solar farms. These benefits will serve the interest of civil aviation and contribute to the self-sustainability of the airport.

DATES: Comments must be received on or before October 30, 2017.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Mr. James W. Lomen, Manager, Federal Aviation Administration, San Francisco Airports District Office, Federal Register Comment, 1000 Marina Boulevard, Suite 220, Brisbane, CA 94005. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Glen Rickelton, Airport Manager, Sacramento International Airport, 6900 Airport Boulevard, Sacramento, CA 95837.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106-181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the

Federal Register 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

The County of Sacramento, California request for a modification to the conditions in the Grant Assurances to permit the non-aeronautical use of approximately 31.1 acres of land at Sacramento International Airport for two separate solar array sites to produce solar generated electricity was revised from 31.1 acres to approximately 35.3 acres of airport land. One solar array site was changed from 16.3 acres to 20.3 acres of unimproved land located in the north portion of the airfield, west of Taxiway D. The other solar array site was changed from 14.8 acres to 15.0 acres of an unused parking area between Aviation Drive and Taxiway D in the south portion of the airfield. The size of the solar arrays did not change. Reuse of the land for the solar arrays will not impede future development of the airport as there is sufficient land for airport development. The lease rate is based on the appraised market value of the land. Compensation will be in the form of a reduced electrical rate that will produce cost savings that equals or exceeds the appraised market value of the land. The use of the property for the solar arrays represents a compatible use. Construction and operations of the solar arrays will not interfere with airport operations. The solar arrays will reduce airport operational costs, which will enhance the self-sustainability of the airport and, thereby, serve the interest of civil aviation.

Issued in Brisbane, California, on September 21, 2017.

James W. Lomen,

Manager, San Francisco Airports District Office, Western-Pacific Region.

[FR Doc. 2017-20851 Filed 9-27-17; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2017-0018 (Notice No. 2017-05)]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on 11 information collections pertaining to hazardous materials transportation for which PHMSA intends to request renewal from the Office of Management and Budget. On April 21, 2017, PHMSA published a notice with a 60-day comment period soliciting comments on these ICRs [82 FR 18828] under Docket No. PHMSA-2017-0018 (Notice No. 2017-01). PHMSA received one comment; however, it was outside the scope of the April 21, 2017, notice.

DATES: Interested persons are invited to submit comments on or before October 30, 2017.

ADDRESSES: You may submit comments identified by Docket No. PHMSA-2017-0018 (Notice No. 2017-05) by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* To the Docket Management System; Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and Docket Number (PHMSA-2017-0018) for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information you provide.

Requests for a copy of an information collection should be directed to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division, (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

Docket: For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these

comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division, (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), title 5, Code of Federal Regulations (CFR) requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to the Office of Management and Budget (OMB) for renewal and extension. These information collections are contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a 3-year term of approval for each information collection activity and will publish a notice in the **Federal Register** upon OMB's approval.

PHMSA requests comments on the following 11 information collections:

1. *Title:* Hazardous Materials Security Plans.

OMB Control Number: 2137-0612.

Summary: To assure public safety, shippers and carriers must take reasonable measures to plan and implement procedures to prevent unauthorized persons from taking control of, or attacking, hazardous materials shipments. Part 172 of the HMR requires persons who offer or transport certain hazardous materials to develop and implement written plans to enhance the security of hazardous materials shipments. The security plan requirements as prescribed in § 172.800(b) apply to specific types of

shipments. Such shipments include but are not limited to: Shipments greater than 3,000 kg (6,614 pounds) for solids or 3,000 liters (792 gallons) for liquids and gases in a single packaging such as a cargo tank motor vehicle, portable tank, tank car, or other bulk container; any quantity of a Division 1.1, 1.2, or 1.3 material; a large bulk quantity of a Division 2.1 material; or any quantity of a poison-by-inhalation material. A security plan reduces the possibility that a hazardous materials shipment will be used as a weapon of opportunity by a terrorist or criminal.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 54,999.

Total Annual Responses: 54,999.

Total Annual Burden Hours: 427,719.

Frequency of Collection: On occasion.

2. *Title:* Rulemaking, Special Permits, and Preemption Requirements.

OMB Control Number: 2137-0051.

Summary: This information collection applies to procedures for requesting changes, exceptions, and other determinations in relation to the HMR. Specific areas covered in this information collection include part 105, subparts A and B, "Hazardous Materials Program Definitions and General Procedures"; part 106, subpart B, "Participating in the Rulemaking Process"; part 107, subpart B, "Special Permits"; and part 107, subpart C, "Preemption." The Federal hazardous materials transportation law directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in commerce. PHMSA is authorized to accept petitions for rulemaking and appeals, as well as applications for special permits, preemption determinations, and waivers of preemption. The types of information collected include:

- (1) *Petitions for Rulemaking:* Any person may petition PHMSA to add, amend, or delete a regulation in parts 110, 130, 171 through 180, or may petition the Office of the Chief Counsel to add, amend, or delete a regulation in parts 105, 106, or 107. Petitions submitted to PHMSA are required to contain information as required by § 106.100 of the HMR.

- (2) *Appeals:* Except as provided in § 106.40(e), any person may submit an appeal to our actions in accordance with the Appeals procedures found in §§ 106.110 through 106.130.

- (3) *Applications for Special Permit:* Any person applying for a special permit must include the citation of the specific regulation from which the applicant seeks relief; specification of

the proposed mode or modes of transportation; detailed description of the proposed special permit (e.g., alternative packaging, test, procedure, or activity), including as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents, etc.

(4) *Applications for Preemption Determination:* With the exception of highway routing matters covered under 49 U.S.C. 5125(c), any person directly affected by any requirement of a State, political subdivision, or Indian tribe may apply to the Chief Counsel for a determination whether that requirement is preempted by § 107.202(a), (b), or (c). The application must include the text of the State, political subdivision, or Indian tribe requirement for which the determination is sought; specify each requirement of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security with which the applicant seeks the State, political subdivision, or Indian tribe requirement to be compared; explain why the applicant believes the State, political subdivision, or Indian tribe requirement should or should not be preempted under the standards of § 107.202; and state how the applicant is affected by the State, political subdivision, or Indian tribe requirement.

(5) *Waivers of Preemption:* With the exception of requirements preempted under 49 U.S.C. 5125(c), any person may apply to the Chief Counsel for a waiver of preemption with respect to any requirement that: (1) The State, political subdivision thereof, or Indian tribe acknowledges to be preempted under the Federal hazardous materials transportation law, or (2) has been determined by a court of competent jurisdiction to be so preempted. The Chief Counsel may waive preemption with respect to such requirement upon a determination that such requirement affords an equal or greater level of protection to the public than is afforded by the requirements of the Federal hazardous materials transportation law or the regulations issued thereunder, and does not unreasonably burden commerce.

The information collected under these application procedures is used in the review process by PHMSA in determining the merits of the petitions for rulemakings and for reconsideration of rulemakings, as well as applications for special permits, preemption determinations, and waivers of

preemption to the HMR. The procedures governing these petitions for rulemaking and for reconsideration of rulemakings are covered in subpart B of part 106.

Applications for special permits, preemption, determinations, and waivers of preemption are covered under subparts B and C of part 107.

Rulemaking procedures help PHMSA determine if a rule change is necessary, is consistent with public interest, and maintains a level of safety equal to or superior to that of current regulations. Special permit procedures provide the information required for analytical purposes to determine if the requested relief provides for a comparable level of safety as provided by the HMR.

Additionally, PHMSA uses information from preemption procedures to determine whether a requirement of a State, political subdivision, or Indian tribe is preempted under 49 U.S.C. 5125, or regulations issued thereunder, or whether a waiver of preemption should be issued.

Affected Public: Shippers, carriers, packaging manufacturers, and other affected entities.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 3,304.

Total Annual Responses: 4,294.

Total Annual Burden Hours: 4,899.

Frequency of Collection: On occasion.

3. *Title:* Requirements for United Nations (UN) Cylinders.

OMB Control Number: 2137–0621.

Summary: This information collection and recordkeeping burden is the result of efforts to amend the HMR to adopt standards for the design, construction, maintenance, and use of cylinders and multiple-element gas containers (MEGCs) based on the standards contained in the UN Recommendations on the Transport of Dangerous Goods. Aligning the HMR with the UN Recommendations promotes flexibility, permits the use of technological advances for the manufacture of the pressure receptacles, provides for a broader selection of pressure receptacles, reduces the need for special permits, and facilitates international commerce in the transportation of compressed gases. Information collection requirements address domestic and international manufacturers of cylinders that request approval by the approval agency for cylinder design types. The approval process for each cylinder design type includes review, filing, and recordkeeping of the approval application. The approval agency is required to maintain a set of the approved drawings and calculations for each design it reviews and a copy of

each initial design type approval certificate approved by the Associate Administrator for the Office of Hazardous Materials Safety for not less than 20 years.

Affected Public: Fillers, owners, users, and retesters of UN cylinders.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 50.

Total Annual Responses: 150.

Total Annual Burden Hours: 900.

Frequency of Collection: On occasion.

4. *Title:* Response Plans for Shipments of Oil.

OMB Control Number: 2137–0591.

Summary: In recent years, several major oil discharges damaged the marine environment of the United States. Under authority of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, PHMSA issued regulations in 49 CFR part 130 that require preparation of written spill response plans.

Affected Public: Carriers that transport oil in bulk, by motor vehicle or rail.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 8,000.

Total Annual Responses: 8,000.

Total Annual Burden Hours: 10,560.

Frequency of Collection: On occasion.

5. *Title:* Cargo Tank Specification Requirements.

OMB Control Number: 2137–0014.

Summary: This information collection consolidates and describes the information collection provisions in parts 107, 178, and 180 of the HMR involving the manufacture, qualification, maintenance, and use of all specification cargo tank motor vehicles. It also includes the information collection and recordkeeping requirements for persons who are engaged in the manufacture, assembly, requalification, and maintenance of DOT specification cargo tank motor vehicles. The types of information collected include:

(1) *Registration Statements:* Cargo tank manufacturers and repairers, as well as cargo tank motor vehicle assemblers, are required to be registered with DOT and must furnish information relative to their qualifications to perform the functions in accordance with the HMR. DOT uses the registration statements to identify these persons to ensure they possess the knowledge and skills necessary to perform the required functions and that they are performing the specified functions in accordance with the applicable regulations.

(2) *Requalification and Maintenance Reports:* These reports are prepared by

persons who requalify or maintain cargo tanks. This information is used by cargo tank owners, operators and users, and DOT compliance personnel to verify that the cargo tanks are requalified, maintained, and in proper condition for the transportation of hazardous materials.

(3) *Manufacturers' Data Reports, Certificates, and Related Papers:* These reports are prepared by cargo tank manufacturers and certifiers. They are used by cargo tank owners, operators, users, and DOT compliance personnel to verify that a cargo tank motor vehicle was designed and constructed to meet all requirements of the applicable specification.

Affected Public: Manufacturers, assemblers, repairers, requalifiers, certifiers, and owners of cargo tanks.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 41,366.

Total Annual Responses: 132,600.

Total Annual Burden Hours: 101,507.

Frequency of Collection: On occasion.

6. *Title:* Container Certification

Statements.

OMB Control Number: 2137-0582.

Summary: Shippers of explosives, in freight containers or transport vehicles by vessel, are required to certify on shipping documentation that the freight container or transport vehicle meets minimal structural serviceability requirements. This requirement ensures an adequate level of safety for transport of explosives aboard vessel and consistency with similar requirements in international standards.

Affected Public: Shippers of explosives in freight containers or transport vehicles by vessel.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 650.

Total Annual Responses: 890,000.

Total Annual Burden Hours: 14,908.

Frequency of Collection: On occasion.

7. *Title:* Testing Requirements for

Non-Bulk Packaging.

OMB Control Number: 2137-0572.

Summary: This information collection consolidates and describes the information provisions in parts 173 and 180 of the HMR on the testing requirements for non-bulk packagings. This OMB control number covers performance-oriented packaging standards and allows packaging manufacturers and shippers increased flexibility in selecting more economical packagings for their products. This information collection also allows customizing the design of packagings to better suit the transportation environment that they will encounter and encourages technological

innovations, decreases packaging costs, and significantly reduces the need for special permits.

Affected Public: Each non-bulk packaging manufacturer that tests packagings to ensure compliance with the HMR.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 5,010.

Total Annual Responses: 15,500.

Total Annual Burden Hours: 32,500.

Frequency of Collection: On occasion.

8. *Title:* Testing, Inspection, and Marking Requirements for Cylinders.

OMB Control Number: 2137-0022.

Summary: Requirements in § 173.301 for qualification, maintenance, and use of cylinders include periodic inspections and retesting to ensure continuing compliance with packaging standards. Information collection requirements address registration of retesters and marking of cylinders by retesters with their identification number and retest date following the completion of required tests. The cylinder owner or designated agent must keep records showing the results of inspections and retests either until expiration of the retest period or until the cylinder is re-inspected or retested, whichever occurs first. These requirements ensure that retesters have the qualifications to perform tests and identify to cylinder fillers and users that cylinders are qualified for continuing use. Information collection requirements in § 173.303 require that fillers of acetylene cylinders keep, for at least 30 days, a daily record of the representative pressure to which cylinders are filled.

Affected Public: Fillers, owners, users, and retesters of reusable cylinders.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 139,352.

Total Annual Responses: 153,287.

Total Annual Burden Hours: 171,462.

Frequency of Collection: On occasion.

9. *Title:* Flammable Cryogenic Liquids.

OMB Control Number: 2137-0542.

Summary: Provisions in § 177.840(a)(2) specify certain safety procedures and documentation requirements for drivers of motor vehicles transporting flammable cryogenic liquids. This information allows the driver to take appropriate remedial actions to prevent a catastrophic release of the flammable cryogenics should the temperature of the material begin to rise excessively or if the travel time will exceed the safe travel time. These requirements are intended to ensure a high level of safety when transporting flammable

cryogenics due to their extreme flammability and high compression ratio when in a liquid state.

Affected Public: Carriers of cryogenic materials.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 65.

Total Annual Responses: 18,200.

Total Annual Burden Hours: 1,213.

Frequency of Collection: On occasion.

10. *Title:* Approval for Hazardous Materials.

OMB Control Number: 2137-0557.

Summary: Without these requirements, there is no means to: (1) Determine whether applicants who apply to become designated approval agencies are qualified to evaluate package design, test packages, classify hazardous materials, etc.; (2) verify that various containers and special loading requirements for vessels meet the requirements of the HMR; and (3) assure that regulated hazardous materials pose no danger to life and property during transportation.

There are several approval provisions contained in the HMR and associated procedural regulations. Responses to these information collections are required to obtain benefits, such as becoming an approval or certification agency, or to obtain a variance from packaging or handling requirements based on information provided by the respondent. These benefits and variances involve areas, for example, such as UN third-party certification; authorization to examine and test lighters; authorization to examine and test explosives; and authorization to re-qualify DOT cylinders.

Affected Public: Business and other entities who must meet the approval requirements in the HMR.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 14,323.

Total Annual Responses: 14,674.

Total Annual Burden Hours: 30,070.

Frequency of Collection: On occasion.

11. *Title:* Rail Carrier and Tank Car Tanks Requirements, Rail Tank Car Tanks—Transportation of Hazardous Materials by Rail.

OMB Control Number: 2137-0559.

Summary: This information collection consolidates and describes the information provisions in parts 172, 173, 174, 179, and 180 of the HMR on the transportation of hazardous materials by rail and the manufacture, qualification, maintenance, and use of tank cars. The types of information collected include:

(1) *Approvals of the Association of American Railroads (AAR) Tank Car Committee:* An approval is required

from the AAR Tank Car Committee for a tank car to be used for a commodity other than those specified in part 173 and on the certificate of construction. This information is used to ascertain whether a commodity is suitable for transportation in a tank car. AAR approval is also required for an application for approval of designs, materials and construction, conversion or alteration of tank car tanks constructed to a specification in part 179, or an application for construction of tank cars to any new specification. This information is used to ensure that the design, construction, or modification of a tank car or the construction of a tank car to a new specification is performed in accordance with the applicable requirements.

(2) *Progress Reports*: Each owner of a tank car that is required to be modified to meet certain requirements specified in § 173.31 must submit a progress report to the Federal Railroad Administration (FRA). FRA uses this information to ensure that all affected tank cars are modified before the regulatory compliance date.

(3) *FRA Approvals*: An approval is required from FRA to transport a bulk packaging (such as a portable tank, IM portable tank, intermediate bulk container, cargo tank, or multi-unit tank car tank) containing a hazardous material in container-on-flat-car or trailer-on-flat-car service other than as authorized by § 174.63. FRA uses this information to ensure that the bulk package is properly secured using an adequate restraint system during transportation. An FRA approval is also required for the movement of any tank car that does not conform to the applicable requirements in the HMR. These latter movements are currently being reported under the information collection for special permit applications.

(4) *Manufacturer Reports and Certificate of Construction*: These documents are prepared by tank car manufacturers and used by owners, users, and FRA personnel to verify that rail tank cars conform to the applicable specification.

(5) *Quality Assurance Program*: Facilities that build, repair, and ensure the structural integrity of tank cars are required to develop and implement a quality assurance program. This information is used by the facility and DOT compliance personnel to ensure that each tank car is constructed or repaired in accordance with the applicable requirements.

(6) *Inspection Reports*: A written report must be prepared and retained for each tank car that is inspected and

tested in accordance with § 180.509 of the HMR. Rail carriers, users, and FRA use this information to ensure that rail tank cars are properly maintained and in safe condition for transporting hazardous materials.

Affected Public: Manufacturers, owners, and rail carriers of tank.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 266.

Total Annual Responses: 17,685.

Total Annual Burden Hours: 2,834.

Frequency of Collection: Annually.

William S. Schoonover,

Associate Administrator of Hazard Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2017-20796 Filed 9-27-17; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2017-0122; Notice No. 2017-10]

Hazardous Materials: Emergency Waiver No. 4

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of emergency waiver order.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is issuing an emergency waiver order to persons conducting operations under the direction of Environmental Protection Agency Region 2 or United States Coast Guard 7th District within the Hurricane Maria emergency and disaster areas of Puerto Rico and the United States Virgin Islands. This Waiver Order is effective September 22, 2017, and shall remain in effect for 30 days from the date of issuance.

FOR FURTHER INFORMATION CONTACT:

Adam Horsley, Deputy Assistant Chief Counsel for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, telephone: (202) 366-4400.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of 49 U.S.C. 5103(c), the Acting Administrator for the Pipeline and Hazardous Materials Safety Administration (PHMSA), hereby declares that an emergency exists that warrants issuance of a Waiver of the Hazardous Materials Regulations (HMR, 49 CFR parts 171-180) to persons conducting operations under the direction of Environmental

Protection Agency (EPA) Region 2 (290 Broadway, New York, NY 10007-1866) or United States Coast Guard (USCG) 7th District (Brickell Plaza Federal Building, 909 SE 1st Avenue, Miami, FL 33131-3050) within the Hurricane Maria emergency and disaster areas of Puerto Rico and the United States Virgin Islands. The Waiver is granted to support EPA and USCG in taking appropriate actions to prepare for, respond to, and recover from a threat to public health, welfare, or the environment caused by actual or potential oil and hazardous materials incidents resulting from Hurricane Maria.

On September 18, 2017, the President issued an Emergency Declaration for Hurricane Maria for the Commonwealth of Puerto Rico (EM-3391) and the United States Virgin Islands (EM-3390). On September 20, 2017, the President issued a Major Disaster Declaration for the United States Virgin Islands (DR-4340).

This Waiver Order covers all areas identified in the declarations, as amended. Pursuant to 49 U.S.C. 5103(c), PHMSA has authority delegated by the Secretary (49 CFR 1.97(b)(3)) to waive compliance with any part of the HMR provided that the grant of the waiver is: (1) in the public interest; (2) not inconsistent with the safety of transporting hazardous materials; and (3) necessary to facilitate the safe movement of hazardous materials into, from, and within an area of a major disaster or emergency that has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

Given the continuing impacts caused by Hurricane Maria, PHMSA's Acting Administrator has determined that regulatory relief is in the public interest and necessary to ensure the safe transportation in commerce of hazardous materials while EPA and USCG execute their recovery and cleanup efforts in Puerto Rico and the United States Virgin Islands. Specifically, PHMSA's Acting Administrator finds that issuing this Waiver Order will allow EPA and USCG to conduct their emergency support function under the National Response Framework to safely remove, transport, and dispose of hazardous materials. By execution of this Waiver Order, persons conducting operations under the direction of EPA Region 2 or USCG 7th District within the Hurricane Maria emergency and disaster areas of Puerto Rico and the United States Virgin Islands are authorized to offer and transport non-radioactive hazardous materials under alternative safety

requirements imposed by EPA Region 2 or USCG 7th District when compliance with the HMR is not practicable. Under this Waiver Order, non-radioactive hazardous materials may be transported to staging areas within 50 miles of the point of origin. Further transportation of the hazardous materials from staging areas must be in full compliance with the HMR.

This Waiver Order is effective September 22, 2017, and shall remain in effect for 30 days from the date of issuance.

Issued in Washington, DC.

Drue Pearce,

Acting Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2017-20766 Filed 9-27-17; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2017-0073 (Notice No. 2017-04)]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on an information collection pertaining to hazardous materials transportation for which PHMSA intends to request renewal from the Office of Management and Budget.

DATES: Interested persons are invited to submit comments on or before November 27, 2017.

ADDRESSES: You may submit comments, identified by Docket No. PHMSA-2017-0073 (Notice No. 2017-04), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and Docket Number (PHMSA-2017-0073) for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information provided.

Requests for a copy of an information collection should be directed to Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division, (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

Docket: For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Steven Andrews or T. Glenn Foster, Standards and Rulemaking Division, (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), title 5, Code of Federal Regulations (CFR) requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to the Office of Management and Budget (OMB) for renewal and extension. This information collection is contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collection was last approved. The following information is provided for this information collection: (1) Title of the information collection,

including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a 3-year term of approval for this information collection activity and will publish a notice in the **Federal Register** upon OMB's approval.

PHMSA requests comments on the following information collection:

Title: Hazardous Materials Shipping Papers & Emergency Response Information.

OMB Control Number: 2137-0034.

Summary: This information collection is for the requirement to provide a shipping paper and emergency response information with shipments of hazardous materials. Shipping papers are a basic communication tool in the transportation of hazardous materials and, by definition (*see* 49 CFR 171.8), include a shipping order, bill of lading, manifest, or other shipping document serving a similar purpose and containing the information required by §§ 172.202, 172.203, and 172.204 of the HMR. A shipping paper with emergency response information must accompany most hazardous materials shipments and be readily available at all times during transportation.

Shipping papers serve as the principal source of information regarding the presence of hazardous materials, identification, quantity, and emergency response procedures. They inform on compliance with other requirements (*i.e.*, the placement of rail cars containing different hazardous materials in trains); prevent the loading of poisons with foodstuffs; maintain the separation of incompatible hazardous materials; and limit the amount of radioactive materials that may be transported in a vehicle or aircraft. Shipping papers and emergency response information also notify transport workers that hazardous materials are present and serve as a principal means of identifying hazardous materials during transportation emergencies. Firefighters, police, and other emergency response personnel are trained to obtain the DOT shipping papers and emergency response information when responding to hazardous materials transportation emergencies.

The availability of accurate information concerning hazardous materials being transported significantly improves response efforts in these types of emergencies.

Affected Public: Shippers and carriers of hazardous materials in commerce.

*Annual Reporting and Recordkeeping Burden:**Number of Respondents:* 260,000.*Total Annual Responses:* 175,234,493.*Total Annual Burden Hours:*

4,598,685.

Frequency of Collection: On occasion.**William S. Schoonover,***Associate Administrator of Hazard Materials Safety, Pipeline and Hazardous Materials Safety Administration.*

[FR Doc. 2017-20797 Filed 9-27-17; 8:45 am]

BILLING CODE 4910-60-P**DEPARTMENT OF VETERANS AFFAIRS****[OMB Control No. 2900-NEW]****Agency Information Collection Activity: Veterans Experience Access Survey Questions Scheduling Appointment: Survey Reporting****AGENCY:** Veterans Experience Office (VEO), Department of Veterans Affairs.**ACTION:** Notice.

SUMMARY: Veterans Experience Office (VEO), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 27, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to oir_submission@omb.eop.gov. Please refer to "OMB Control No. 2900-NEW" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Marcelle Saab 202-461-0000.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct

or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VEO invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VEO's functions, including whether the information will have practical utility; (2) the accuracy of VEO'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104-13; 44 U.S.C. 3501-3521.

Title: Veterans Experience Access Survey Questions Scheduling Appointment: Survey Reporting.

OMB Control Number: 2900-NEW.

Type of Review: Approval for public dissemination of survey results.

Abstract: Veterans Experience Access Outpatient Survey Questions Scheduling Appointment is used to gather near real time feedback about specific interactions Veterans have with the Department of Veterans Affairs regarding their Outpatient medical experiences. The data collected will be publicly disseminated.

Affected Public: Individuals.

Estimated Annual Burden: 30,000 hours annually.

Estimated Average Burden per Respondent: 1 minute.

Frequency of Response: Once.

Estimated Number of Respondents: 1.8 million annually.

By direction of the Secretary.

Cynthia Harvey-Pryor,*Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.*

[FR Doc. 2017-20769 Filed 9-27-17; 8:45 am]

BILLING CODE 8320-01-P**DEPARTMENT OF VETERANS AFFAIRS****[OMB Control No. 2900-0405]****Agency Information Collection Activity: REPS Annual Eligibility Report (Under the Provisions of Section 156, Pub. L. 97-377)****AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.**ACTION:** Notice.

SUMMARY: Veteran's Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 27, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Yvette Allmond, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to yvette.allmond@va.gov. Please refer to "OMB Control No. 2900-0405" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461-5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 42 U.S.C. 402; Executive Order 12436.

Title: REPS Annual Eligibility Report (Under the Provisions of Section 156, Pub. L. 97-377) (VA Form 21P-8941).

OMB Control Number: 2900-0405.

Type of Review: Extension without change of a currently approved collection.

Abstract: Restored Entitlement Program for Survivors (REPS) benefits are payable to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981. Child beneficiaries over age 18 and under age 23 must be enrolled full-time in an approved post-secondary school.

Executive Order 12436 "Payment of Certain Benefits to Survivors of Persons Who Died In or As A Result of Military Service" (found at 42 U.S.C. 402 (Note)) directs VA administer the provisions of Public Law 97-377 Section 156. VA codified this authority at 38 CFR 3.812.

VBA uses VA Form 21-8941 to verify a REPS beneficiary's entitlement factors including annual earnings, marital status, and the status of children. The form is completed annually by beneficiaries who have earned income that is at or near the limit of earned income. Benefits may be reduced or increased based on the beneficiary's responses.

The VA Form number is being changed to "21P-8941" to reflect Pension and Fiduciary Service's responsibility for the form.

Affected Public: Individuals and households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,200.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017-20768 Filed 9-27-17; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0399]

Agency Information Collection

Activity: Student Beneficiary Report—REPS (Restored Entitlement Program for Survivors)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veteran's Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 27, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy Kessinger, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0399" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT:

Cynthia Harvey-Pryor at (202) 461-5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 42 U.S.C. 402; Executive Order 12436.

Title: Student Beneficiary Report—REPS (Restored Entitlement Program for Survivors) (VA Forms 21P-8938 & 21P-8938-1).

OMB Control Number: 2900-0399.

Type of Review: Extension without change of a currently approved collection.

Abstract: Restored Entitlement Program for Survivors (REPS) benefits are payable to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981. Child beneficiaries over age 18 and under age 23 must be enrolled full-time in an approved post-secondary school.

Executive Order 12436 "Payment of Certain Benefits to Survivors of Persons Who Died In or As A Result of Military Service" (found at 42 U.S.C. 402 (Note)) directs VA administer the provisions of Public Law 97-377 Section 156. VA codified this authority at 38 CFR 3.812.

VBA uses VA Forms 21-8938 and 21-8938-1 to verify that a surviving child who is receiving REPS benefits based on schoolchild status is in fact enrolled full-time in an approved school and is otherwise eligible for continued benefits. VA Form 21-8938 is generated by VA's central computer system each March and sent to all student beneficiaries. If the completed form is not received by the end of May, the beneficiary is sent a system-generated due process letter with another VA Form 21-8938. VBA uses VA Form 21-8938-1 if another copy of the form is needed by a respondent.

The VA Form number is being changed to "21P-8941" to reflect Pension and Fiduciary Service's responsibility for the form.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,767 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 5,300.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017-20767 Filed 9-27-17; 8:45 am]

BILLING CODE 8320-01-P



FEDERAL REGISTER

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Part II

Department of Homeland Security

U.S. Customs and Border Protection

Department of the Treasury

19 CFR Parts 4, 10, 18, et al.
Changes to the In-Bond Process; Rule

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection****DEPARTMENT OF THE TREASURY**

19 CFR Parts 4, 10, 18, 19, 113, 122, 123, 141, 142, 143, 144, 146, 151, and 181

[USCBP–2012–0002: CBP Dec. 17–13]

RIN 1515–AD81

Changes to the In-Bond Process

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

ACTION: Final rule.

SUMMARY: This final rule adopts, with several changes, proposed amendments to U.S. Customs and Border Protection (CBP) regulations regarding changes to the in-bond process published in the **Federal Register** on February 22, 2012. The in-bond process allows imported merchandise to be entered at one U.S. port of entry without appraisal or payment of duties and transported by a bonded carrier to another U.S. port of entry or other authorized destination provided all statutory and regulatory conditions are met. At the destination port, the merchandise is entered or exported. The changes in this rule, including the automation of the in-bond process, will enhance CBP's ability to regulate and track in-bond merchandise and ensure that in-bond merchandise is properly entered or exported. This document addresses comments received in response to the proposed rule and makes several changes in response to the comments that further simplify and facilitate the in-bond process.

DATES: This rule is effective on November 27, 2017.

FOR FURTHER INFORMATION CONTACT: James Swanson, Director, Cargo Security and Controls, Cargo Conveyance & Security, Office of Field Operations, (202) 325–1257.

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List of Acronyms and Technical Terms

ABI Automated Broker Interface
 ACE Automated Commercial Environment
 AMS Automated Manifest System
 CBP Customs and Border Protection
 DHS Department of Homeland Security
 EDI Electronic Data Interchange
 EIN Employer Identification Number
 FIRMS Facilities Information and Resources Management System
 FTZ Foreign Trade Zone
 GAO Government Accountability Office
 HTSUS Harmonized Tariff Schedule of the United States
 ISF Importer Security Filing
 IE Immediate Exportation
 IT Immediate Transportation
 NVOCC Non-Vessel Operating Common Carrier
 SCAC Standard Carrier Alpha Code
 SNP Secondary Notify Party
 T&E Transportation and Exportation
 VOC Vessel Operating Carrier
 QP/WP—An ABI hosted in-bond system for all modes that allows all parties, carriers and non-carriers, to submit electronic in-bond applications directly to CBP, as well as report their arrival and export. The “QP” half is the application function, the “WP” half is the arrival/export function.

I. Background

Pursuant to 19 U.S.C. 1552 and 19 U.S.C. 1553, merchandise may be entered at a U.S. port of entry, without appraisal or the payment of duties, for transportation to another port for entry, or for exportation, provided that all statutory and regulatory conditions are met. The applicable regulations governing the transportation of in-bond merchandise under the above authorities are set forth in title 19 of the Code of Federal Regulations (19 CFR), parts 18, 122, and 123. Part 18 covers “Transportation in bond and merchandise in transit”; part 122 covers “Air Commerce regulations”; and part 123 covers “CBP relations with Canada and Mexico.” For a detailed discussion of the statutory and regulatory histories, and the factors governing development of these regulations, see the notice of proposed rulemaking (NPRM), “Changes to the In-Bond Process,” published in the **Federal Register** on February 22, 2012 (77 FR 10622).

Generally, when merchandise reaches the United States, the merchandise may

be entered for consumption, entered for warehouse, admitted into a foreign trade zone, or entered for transportation in-bond to another port. The focus of this rule is on merchandise that is entered for transportation in-bond.

Transportation of merchandise in-bond is the movement of imported merchandise, secured by a bond, from one port to another prior to the appraisal of the merchandise and without the payment of duties. The transportation of in-bond merchandise is frequently referred to as an in-bond movement or shipment.

There are three types of in-bond transportation entries: Immediate Transportation (IT), Transportation and Exportation (T&E), and Immediate Exportation (IE). An IT entry allows merchandise upon its arrival at a U.S. port to be transported to another U.S. port, where a subsequent entry must be filed. *See* 19 U.S.C. 1552 and 19 CFR 18.11. A T&E entry allows merchandise to be entered at a U.S. port for transit through the United States to another U.S. port, where the merchandise is exported without the payment of duties. *See* 19 U.S.C. 1553 and 19 CFR 18.20. An IE entry allows cargo that has arrived at a U.S. port to be immediately exported from that same port without the payment of duties. *See* 19 CFR 18.7 and 18.25.

A. Notice of Proposed Rulemaking

On February 22, 2012, Customs and Border Protection (CBP) published a NPRM titled "Changes to the In-Bond Process" in the **Federal Register** (77 FR 10622), proposing to revise the in-bond regulations in part 18 as well as other applicable parts of the CBP regulations. The proposed amendments would change the in-bond process from a paper-dependent process to an automated paperless process, provide CBP with the necessary tools to better track in-bond merchandise to improve security and trade compliance, and address certain weaknesses in the in-bond system identified by the Government Accountability Office (GAO) in a report to Congress dated April 17, 2007 (GAO Report).

CBP proposed making the following five major changes to the in-bond process: (1) Except for merchandise transported by pipeline and truck shipments transiting the United States from Canada, eliminate the paper in-bond application (CBP Form 7512) and require carriers or their agents to electronically file the in-bond application; (2) require additional information on the in-bond application including the six-digit Harmonized Tariff Schedule of the United States

number if available; (3) establish a 30-day maximum transit time to transport in-bond merchandise between U.S. ports, for all modes of transportation except pipeline; (4) require carriers to electronically request and receive permission from CBP before diverting in-bond merchandise from its intended destination port to another port; and (5) require carriers to report the arrival and location of the in-bond merchandise within 24 hours of arrival at the port of destination or port of exportation. CBP did not propose changing the in-bond procedures found in the air commerce regulations at 19 CFR part 122, subparts J and L, except to change the specified maximum transit and export times to conform to the proposed changes in Part 18. For a detailed discussion of the proposed changes to the regulations and the GAO Report see the NPRM.

CBP requested public comments on the NPRM. In response, CBP received 51 comments from the trade community including carriers, brokers, importers, freight forwarders, zone operators, and trade groups. The comments were generally favorable to the rule as a whole. However, commenters raised concerns about specific proposed amendments and how the amendments would affect their operations. Many comments and questions related to the automated systems for the electronic filing of in-bond transactions. After consideration of all the comments, CBP has decided to issue this final rule, which adopts the proposed amendments with several changes in response to the comments. The main changes are summarized in Section I.B., Summary of Main Changes from NPRM, and explained in more detail in Section II, Discussion of Comments. Additional technical and conforming changes are also explained in Section II, Discussion of Comments. CBP is also adding a flexible implementation and enforcement period, as described in Section I.C.

B. Summary of Main Changes From NPRM

1. In-Transit Time for Merchandise Transported by Barge

CBP received many comments regarding the proposed requirement that all in-bond movements must be completed within 30 days. Specifically, commenters expressed concern that due to the specific circumstances of barge transportation, it is not feasible for all in-bond shipments transported by barge to be completed within 30 days and stated that the current 60-day in-bond barge transit time should be maintained. The specific comments are addressed in

more detail in Section II, Discussion of Comments.

Because of the unique nature of barge transportation and because of the various factors that can delay barge shipments, CBP is changing proposed § 18.1(i)(1) in the final rule to extend the in-transit time for in-bond merchandise transported by barge to 60 days, while maintaining the proposed 30-day transit time for the other modes of transportation.

2. Uniform Timeframe for Report of Arrival, Notice of Export, and Other Events

The current regulations require the bonded carrier to report to CBP the arrival of any portion of the in-bond shipment promptly, but no more than two working days after the arrival of the merchandise at the port of destination or the port of exportation. The bonded carrier generally must manually surrender the in-bond document, CBP Form 7512, to the port director, as notice of arrival of the merchandise. *See* 19 CFR 18.2(d).

To allow for better tracking, CBP proposed to amend §§ 18.1, 18.7, and 18.20 to require that the report of arrival for each in-bond shipment be made within 24 hours of the arrival of the merchandise at the port of destination or the port of exportation and to require the delivering bonded carrier to transmit the notice of arrival electronically via a CBP-approved EDI system. CBP also proposed that when in-bond merchandise is exported, CBP be notified of the export within 24 hours of export.

CBP received many comments expressing concern that the requirement to report the arrival of merchandise within 24 hours of arrival would result in firms having to increase their staffing levels and suggested that CBP retain or extend the current two-day reporting requirement. The specific comments are discussed in Section II, Discussion of Comments.

CBP proposed shortening the above timeframes to improve CBP's ability to track in-bond merchandise. However, after further consideration and a review of the comments, CBP decided not to shorten the reporting timeframe. Therefore, CBP is changing proposed § 18.1(j) in the final rule to retain the current time limit of two working days for bonded carriers to report the arrival of merchandise at the port of destination or port of exportation with one technical change. CBP is also changing proposed § 18.7(a)(3) regarding the timeframe for submitting the notice of export from 24 hours to two business days. In addition, CBP is changing all the provisions in

part 18 that impose a timeframe for reporting or updating the in-bond record to two business days so that the requirements are uniform. The sections in part 18 where these changes have been made are §§ 18.1(d)(1)(v), 18.1(h), 18.1(j), 18.7(a)(1), 18.7(a)(3), 18.20, 18.23(a), 18.24(b), 18.25(f), and 18.26(e).

3. Description of the Merchandise

CBP received many comments about the proposed required information on the in-bond application as specified in proposed § 18.1(d)(1). Among other things, CBP proposed requiring the six-digit Harmonized Tariff Schedule of the United States (HTSUS) number if the number is available. If the six-digit HTSUS number is not available, then a detailed description must be provided setting forth the exact nature of the merchandise with sufficient detail to enable CBP and other government agencies to determine if the merchandise is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation. CBP also proposed that if the carrier or other responsible party submitting the in-bond application knows that the merchandise is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation enforced by CBP or another government agency, a statement must be provided setting forth the rule, regulation, law, standard or ban to which the merchandise is subject and the name of the government agency responsible for enforcing the rule, regulation, law, standard or ban. Many commenters thought the proposed requirements were too onerous and that carriers would not have access to the required information.

In response to the above concerns, CBP is eliminating or changing several proposed required data elements on the in-bond application. First, CBP is removing the requirement in proposed § 18.1(d)(1)(ii) that, if the party submitting the in-bond application knows that the merchandise is subject to a rule, regulation, law, standard or ban relating to healthy safety or conservation, the filer must provide that information to CBP along with the name of the government agency responsible for enforcing the rule, regulation, law, standard or ban. In its place, CBP is changing proposed § 18.1(d)(1)(ii) in the final rule to require that in-bond merchandise subject to the authority of a U.S. government agency be described with sufficient accuracy to enable the agency concerned to determine the contents of the shipment.

Second, CBP is removing the requirement in proposed § 18.1(d)(1)(iii)

that the in-bond filer identify prohibited or restricted merchandise.

Third, CBP is removing the requirement in proposed § 18.1(d)(1)(iv) to provide information regarding textiles and textile products for all in-bond applications. This requirement will be retained in a new paragraph (d) in § 18.11 governing T&E in-bond movements. This is consistent with current regulations and should therefore provide no additional burden to parties moving merchandise in-bond.

Fourth, CBP is eliminating the requirement in proposed § 18.1(d)(1)(v) that the filer of the in-bond application “must provide” information regarding merchandise for which the U.S. Government, foreign government or other issuing authority, has issued a visa, permit, license, or other similar number or identifying information and stating instead that the filer “may provide” this information. In lieu of requiring all of the information above, CBP is changing proposed § 18.1(d)(1)(i) to require the filer to provide the six-digit HTSUS number. This is necessary to ensure that CBP knows what merchandise is being transported in-bond in light of the above changes to the required information. The six-digit HTSUS number should be available to in-bond filers because importers need this information to determine duty, cost and admissibility status prior to finalizing purchase contracts or shipment contracts. The six-digit HTSUS number is one of the required data elements for the Importer Security Filing (ISF) for all merchandise arriving by vessel.

4. Reporting the Quantity of In-Bond Merchandise

CBP received many comments about the requirement in proposed § 18.1(d)(1)(vi) to provide “the quantity of the merchandise to be transported to the smallest piece count” in the in-bond application. Commenters found this proposal confusing and requested clarification. To address this concern, CBP is changing proposed § 18.1(d)(1)(vi) to incorporate similar language used in §§ 4.7a (inward manifest) and 123.92 (electronic information for truck cargo required in advance of arrival) regarding quantity. Specifically, CBP is changing the text in the final rule to require “the quantity of the smallest external packing unit.”

5. Divided Shipments

The current regulations allow an in-bond shipment to be split after the shipment reaches the port of destination with a portion of the shipment entered for consumption or warehouse while the

remainder of the shipment is forwarded under a new in-bond to a different port of destination. That provision is contained in § 18.5, which governs in-bond shipments diverted from one destination port to another. Because the provisions for splitting a shipment are not limited to diverted shipments we are moving the text of this provision, currently proposed § 18.5(d), to a new paragraph (m) in § 18.1.

6. Clarification of the Term “Bonded Carrier”

CBP received several comments and questions about which party would be considered the “bonded carrier” and would therefore be liable for a failure to comply with the in-bond requirements. To address these comments, CBP is adding a definition of the term “bonded carrier” in § 18.0(b). “Bonded carrier” is defined as a “carrier of merchandise whose bond under § 113.63 of this title is obligated for the transportation and delivery of merchandise.” The party that will be ultimately liable is the party whose bond is obligated in the in-bond record for the in-bond movement.

7. Transfers (Transshipment) From One Conveyance to Another

A review of the comments addressing proposed § 18.3, revealed that there is some confusion regarding the scope of the term “transshipment” and how the provision should be applied. In order to clarify the rules that apply when merchandise is transferred from one conveyance to another, CBP is replacing the term “transshipment” with the term “transfer.” Accordingly, CBP is renaming § 18.3 from “Transshipment; transfer by bonded cartmen” to “Transfers.” In the discussion that follows, the term “transfer” will be used instead of “transshipment.”

The main concern of the commenters with regard to proposed § 18.3 is with the requirement to report to CBP each time the merchandise is transferred from one conveyance to another. Because in-bond merchandise may be transferred several times during the course of its journey, it is claimed that this reporting requirement places a substantial burden on the bonded carrier liable under the bond.

CBP has reevaluated this requirement in light of the comments and has concluded that the requirement to notify CBP when in-bond merchandise is transferred from one conveyance to another is not necessary. The important information for CBP is which party has assumed liability for the shipment of the in-bond merchandise. Accordingly, CBP is changing proposed § 18.3 by removing the requirement to notify CBP

when merchandise is transferred from one conveyance to another.

In addition, CBP is changing proposed § 18.3 to require that when in-bond merchandise is taken over by a subsequent bonded carrier which assumes liability for the merchandise, a report of arrival must be filed by the original bonded carrier and the subsequent carrier must submit a new in-bond application pursuant to § 18.1 for the merchandise to be transported in-bond.

8. Seals—Transportation of Bonded Merchandise With Non-Bonded Merchandise

CBP received many comments expressing concern about proposed amendments to § 18.4 governing the sealing of conveyances and containers. One of the principal concerns was that the proposed regulations do not allow for the transportation of in-bond merchandise with non-bonded merchandise in the same container, unless all of the merchandise, bonded and non-bonded, is destined for the same port. The result is that in-bond merchandise would not be able to be shipped in “less than container loads” with non-bonded merchandise.¹

CBP has reviewed these comments and concurs that, as proposed, the limitations on transporting in-bond merchandise with non-bonded merchandise would unnecessarily hamper the transportation of in-bond merchandise. Accordingly, CBP is changing the sealing requirements in proposed § 18.4 by adding new provisions § 18.4(b)(2) and (3) in the final rule that allow for the transportation of in-bond merchandise with non-bonded merchandise in a container or compartment that is not sealed, if the in-bond merchandise is corded and sealed, or labeled as in-bond merchandise. This will allow in-bond merchandise to be transported with non-bonded merchandise in a container that is not sealed and will facilitate the filling of containers that would otherwise be less than container load shipments.

Additionally, for clarity, the provision regarding the breaking of seals in case of an emergency or for some other reason is being moved from § 18.3 (transshipment) to § 18.4 (sealing conveyances, compartments and

containers). In response to comments, CBP is removing the requirements to obtain CBP permission to break and replace a seal. However, as provided in § 163.1, the transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States is an activity covered by the general recordkeeping requirements of part 163. Such activity would include the breaking and replacing of seals on merchandise transported in-bond. Therefore, records pertaining to such activity would be covered under part 163.

9. Other Changes

CBP is making additional wording changes and minor editorial changes for better organization or to improve clarity. Among other changes, CBP is no longer using the term “ultimate destination” in proposed § 18.1(d)(1)(vi) to avoid inconsistency with other export laws and regulations and is revising paragraph (vi) to clarify the destination information that is required on the in-bond application for IT shipments and T&E/IE shipments. In addition, CBP is adding a sentence to proposed § 18.1(i)(1), which sets forth the maximum in-transit time, to clarify that in-bond merchandise transported by pipeline is not subject to the time limits in that section. CBP is also revising proposed § 18.1(i)(2), which provides procedures on requesting an extension of the in-transit time, to clarify that the decision to extend the in-transit time period is within CBP’s discretion and to describe some of the factors that may be considered in CBP’s decision to extend the in-transit time period. For further discussion, see Section II, Discussion of Comments.

C. Flexible Enforcement Period

In order to provide the trade with sufficient time to adjust to the new requirements and in consideration of the business process changes that may be necessary to achieve full compliance, CBP in implementing and enforcing the rule, will take into account challenges that carriers may face in complying with the rule, so long as carriers are making satisfactory progress toward compliance and are making a good faith effort to comply with the rule to the extent of their ability. This flexible enforcement will last for 90 days after the effective date of this rule. Additionally, CBP will provide guidance on the new requirements and endeavor to conduct outreach to interested parties in order to facilitate a smooth transition to the new requirements.

II. Discussion of Comments

A. Comments Regarding This Rulemaking Generally

1. Elimination of In-Bond Types

Comment: The specific types of transportation entries (IE, T&E, IT) are outdated and have no effect on cargo security and the movement of goods. Therefore, CBP should consider eliminating them and apply a generic in-bond transportation entry to cover all movement types. CBP currently receives data elements indicating a domestic (D) and international export (I) during the in-bond request process and would know the anticipated movement as a result of these designations.

CBP Response: The current system using specific bond types is derived from 19 U.S.C. 1552 and 1553 which provide for “entry for immediate transportation” and “entry for transportation and exportation,” respectively. Therefore, CBP cannot eliminate them. The current system is beneficial in that it clearly specifies the intended disposition of the goods, *i.e.*, whether the goods will be exported, transported to another port for possible consumption entry, or transported to another port for exportation. There are separate rules for the handling and processing of in-bond merchandise depending on the type of in-bond entry, for example an Importer Security Filing (ISF) is required for a T&E and not an IT.

2. Scope

Comment: CBP should clarify the relationship between proposed § 18.0(a), with respect to requirements and procedures in part 18 of the in-bond regulations and the requirements and procedures of parts 122 and 123 (Air Commerce, and Customs Relations with Canada and Mexico, respectively).

CBP Response: Proposed § 18.0 (Scope; definitions), provides that except as provided in parts 122 and 123, part 18 sets forth the requirements and procedures pertaining to the transportation of merchandise in-bond. Parts 122 (Air Commerce) and 123 (Customs Relations with Canada and Mexico) govern the rules and procedures for the transportation of in-bond merchandise in the air environment and merchandise traveling through and into the United States by truck and train. This means that the provisions of part 18 are applicable to the in-bond procedures not addressed by specific instruction in parts 122 and 123. For example, proposed § 18.8 governing the liability of in-bond carriers is applicable to all in-bond

¹ Less than container load, or LCL, is a term commonly used in the transportation industry to refer to cargo containers that hold goods belonging to more than one shipper or consignee. Carriers use LCL shipments when a load of merchandise is not large enough to fill an entire cargo container. Freight in an LCL shipment is frequently transported to multiple destinations.

movements, regardless of the mode of transportation. Conversely, proposed § 18.4(a)(1) requiring the sealing of containers does not apply to in-bond merchandise traveling by air, because § 122.92(f) specifically provides that the sealing of aircraft, aircraft compartments carrying bonded merchandise, or the cording and sealing of bonded packages carried by the aircraft, is not required. More information on the in-bond transport of air cargo is discussed in Section II.G., Air Cargo.

3. Outreach

Comment: CBP should conduct multiple public meetings well in advance of publication of the final rule. These meetings will allow a necessary forum by which the entire trade community (exporters, freight forwarders, warehouse operators, agents, and carriers) can engage with government to learn about the justifications behind these significant modifications to the current in-bond process. This will also provide all affected parties the opportunity to discuss mutually beneficial alternatives which may accomplish the government’s objectives without putting any sector of the trade at an economic disadvantage when competing in the increasingly fast paced global marketplace.

Should CBP decide to adopt a final rule which does not adopt many of the suggested changes included in the comments, CBP should meet with the affected commenter prior to the finalization and publication of the rule in the **Federal Register**.

CBP Response: CBP worked closely with the various sectors of the trade community, the Trade Support Network (TSN), the Customs Electronic Systems Action Committee (CESAC), and the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC), before publishing the NPRM regarding the general changes

to the in-bond system that were being considered, and CBP took into account extensive feedback from the trade community in the formation of the NPRM. Although CBP has not conducted public meetings or met privately with interested parties regarding the proposals published in the NPRM, CBP has carefully analyzed the various comments that have been submitted and has incorporated numerous suggestions made by the commenters in the drafting of this final rule. In order to provide the trade sufficient time to adjust to the new requirements and in consideration of the business process changes that may be necessary to achieve full compliance, CBP is providing a 60-day delayed effective date to be followed by a 90-day flexible enforcement period. This means that CBP will show flexibility in enforcing the rule, taking into account challenges that carriers may face in complying with the rule, so long as carriers are making satisfactory progress toward compliance and are making a good faith effort to comply with the rule to the extent of their current ability. CBP will also provide guidance on the new requirements and endeavor to conduct outreach to interested parties in order to facilitate a smooth transition to the new requirements.

4. In-Bond Shipments Between the United States and Canada

Comment: The United States and Canada should harmonize the Canadian and U.S. rules on in-transit shipments: Canada could adopt the U.S. approach and require full commercial information, effectively terminating in-transit movements in both countries; or CBP could revise its position on the requirement for full commercial information and harmonize with the current Canadian rules which would restore in-transit shipments through the United States.

CBP Response: The NPRM did not address this issue, and this comment is beyond the scope of this rulemaking.

B. Electronic Filing and Processing of In-Bonds

1. Filing the In-Bond Application

Comment: Many commenters requested further information on the filing process, the systems that will be used, how to file an in-bond application, what functions will be available and how the different systems will work for the various modes of transportation. Some commenters wanted to know how CBP will advise the trade about CBP-approved systems.

CBP Response: Under this rule, an electronic in-bond application is required for in-bond merchandise transported by ocean, rail and truck. The methods available to submit an in-bond application are the Automated Commercial Environment (ACE) or QP/WP. QP/WP is an ABI hosted in-bond system that allows all parties, carriers and non-carriers, to submit electronic in-bond applications directly to CBP, as well as report their arrival and export. The “QP” half is the application function, the “WP” half is the arrival/export function. ACE can be used to file the in-bond application in conjunction with advance or arriving manifest information. For in-bond merchandise transported by air, carriers can file the in-bond application also using ACE or QP/WP.

For reference purposes, the table below lists the EDI systems used for filing in-bond applications for the various modes of transportation and provides links to the Web sites that contain the relevant filing instructions or implementation guides. CBP will promptly inform the public of new CBP approved systems via CBP’s Web site and regular communication systems.

Mode of transportation	CBP EDI system	In-bond application procedures
Ocean	ACE	The in-bond application for cargo arriving by vessel may be filed as part of the arriving ocean manifest or as a subsequent/supplemental filing. Filing instructions are available on the ACE Web site at: http://www.cbp.gov/trade/ace/ocean-manifest .
Rail	ACE	The in-bond application for cargo arriving by rail may be filed as part of the arriving rail manifest or as a subsequent/supplemental filing. Filing instructions are available on the ACE Web site at: http://www.cbp.gov/trade/ace/rail-manifest .
Truck	ACE	The in-bond application for cargo arriving by truck may be filed as part of the arriving truck manifest. Filing instructions are available on the ACE Web site at: http://www.cbp.gov/trade/ace/truck-manifest/edi-message/electronic-truck-manifest .
Air	ACE	The in-bond application for cargo arriving by air may be filed as part of the arriving air manifest or as a subsequent/supplemental filing. Filing instructions are available on the ACE Web site at: http://www.cbp.gov/trade/ace/air-manifest .

Mode of transportation	CBP EDI system	In-bond application procedures
Ocean, Rail, Truck, and Air.	Automated Broker Interface (ABI).	The automated broker interface (ABI) for in-bond entries, known as QP/WP, allows in-bond entries filed for a particular shipment to be associated with arriving manifests or subsequent/supplemental in-bond entries filed for merchandise arriving by any mode. In-bond entries are associated with the arriving manifest by using the Standard Carrier Alpha Code (SCAC) in addition to a unique number to identify the bill of lading. This process covers cargo arriving by ocean, rail, truck, and air, as well as bonded warehouse withdrawals, foreign trade zone movements, pipeline arrivals, etc. Data messages are found in the ACE implementation guides located at: http://www.cbp.gov/document/guidance/bond .

Comment: CBP needs to explain the requirements and procedures for ACE as they may apply to the in-bond process from now until such time as all ACE modules are fully developed and implemented.

CBP Response: Information regarding the requirements and procedures for ACE as they may apply to the in-bond process is available on the CBP Web site at the links listed in the table above. Additionally, CBP will issue additional guidance on the ACE requirements and procedures as ACE modules are developed and deployed. Additional information on messages (e.g. arrival, exportation, amendments and diversions) for in-bond entries using the appropriate data interfaces can be found in the following implementation guides: ACE: <http://www.cbp.gov/trade/ace>. Air: AMS <http://www.cbp.gov/site-page/camir-air-chapters>.

Comment: Will the ACE Secure Data Portal ("Portal") be a viable option for those carriers that do not have EDI capabilities, elect to utilize the ACE Portal as opposed to EDI, or utilize both technologies depending on the situation? Will any function available to EDI users also be available to users of the ACE Secure Data Portal? Will the ACE Portal be available to use for diversion requests?

CBP Response: The ACE Portal does not provide any in-bond functionality and there are no plans to use it for in-bond transactions in the future.

Comment: Bonded carriers will have to electronically report the arrival and exportation of in-bond merchandise in separate CBP-approved systems (Air AMS for air, ACE for ground, ocean and rail). CBP should design its systems so that the arrival and departure messages are communicated between the various systems that have to be used by carriers. This will provide greater visibility and reduce redundancy for in-bond shipments that are transported by air and other modes of transportation. CBP should automate the arrival and export of electronic in-bond shipments regardless of the system used to initiate the in-bond shipment.

CBP Response: CBP agrees that messaging between the systems for in-

bond transactions would greatly facilitate the processing of in-bond transactions. This functionality is now available through Air ACE.

Comment: CBP should expand the availability of the Document Imaging System to motor carriers in order to eliminate the use of paper.

CBP Response: There is no need to use the Document Imaging System (DIS) for the processing of in-bond shipments by truck. CBP is discontinuing the use of the CBP Form 7512 for in-bond shipments transported by truck. Manifest information must be filed using an approved Electronic Data Interchange method.

Comment: CBP should create a web-based technology to allow the broadest level of compliance by the trade. A web-based portal would allow CBP to receive real time in-bond information. CBP must consider the development of a web-based portal where the bonded carrier, FTZ operator or authorized agent can electronically request the status of the in-bond movement. This web-based tool should be used across all modes. A web-based portal would be ideal and would help to serve CBP's objective to maximize the automation of in-bonds with minimum impact to the trade.

CBP Response: CBP is using its current systems to implement the new in-bond requirements and is not creating web-based technology or using a web-based portal for the processing of in-bond transactions beyond what it has already developed within ACE, at this time.

Comment: Current functionality does not allow for the filing of an electronic in-bond application without access to QP and QP requires ABI connectivity which carriers do not currently need to access during their normal business operations.

CBP Response: Although the commenter is correct that in order to file an in-bond application using QP, the filer must have ABI connectivity, an in-bond applicant can also use ACE when the in-bond application is filed as part of the advance or arriving manifest. When filing an in-bond application using QP, the in-bond application is

filed as a stand-alone filing that will be reported on the manifest when all the data has been transmitted.

Comment: Will there be a stand-alone in-bond system available within ACE that is not linked to the manifest record of the original importation?

CBP Response: In order to facilitate processing of in-bond shipments and to reduce redundant filing requirements, CBP has designed the in-bond systems so that they are linked to the manifest record. There will not be a stand-alone in-bond system within ACE that is not linked to the manifest record of the original importation.

Comment: How will responses to diversion requests be transmitted to the carrier? How long will it take for CBP to respond to the diversion request?

CBP Response: The carrier will submit the diversion request using a ACE EDI or a QP/WP message. CBP's response will be immediate. CBP's disposition of the diversion request will be automated so that the carrier will receive authorization for, or denial of, the diversion immediately. The updating of the destination port code in the system will constitute approval of the diversion request. If the destination port code is rejected, that will constitute a denial of the diversion request.

Comment: Will the in-bond application be fully paperless, meaning that there will be no requirement to file hard copies at the origination port for authorization? Some origination ports currently require that the in-bond documentation be validated through the use of perforation machines (e.g., Los Angeles).

CBP Response: When this rule is effective, the in-bond process for in-bond merchandise transported by ocean, rail, or truck, will be fully paperless. It is expected that air will eventually be fully paperless as well, but CBP would propose that through a separate rulemaking.

Comment: With regard to an in-bond application consisting of a transportation entry and manifest, the manifest or its electronic equivalent should only be required at the origination port of entry when the merchandise is first imported into the

United States. Subsequent in-bond applications for the same merchandise should require only a transportation entry.

CBP Response: ACE links all phases of the in-bond movement. When a subsequent in-bond application is filed, the first movement is closed and the second is initiated. The system will require the previous in-bond number, and will then link the two in-bond movements. The manifest information will not have to be submitted a second time.

2. Elimination of the CBP Form 7512

Comment: Some commenters stated that they support eliminating the paper in-bond application (CBP Form 7512) and requiring carriers to file electronically. Carriers already file in-bond entries electronically, so electronic filing will not impose new burdens. It will, however, provide CBP with real time information on goods in transit and allow for easy reconciliation of shipments as goods are arrived and entered at another U.S. port or exported. The Automated Commercial System (ACS) currently allows for electronic in-bond filing now, but does not collect all the information CBP needs. These commenters support the proposal to utilize the increasingly functional ACE for this purpose. Because shippers are already familiar with ACE, this should not cause problems for them and it will increase efficiency.

CBP Response: CBP appreciates the positive feedback and agrees that changing the in-bond process from a paper to an electronic process will increase efficiency, allow for easier reconciliation for carriers, and facilitate the collection of information by CBP without further burdening the trade.

Comment: Some commenters, who agree that the in-bond application (the filing) should be electronically submitted to CBP, stated that the CBP Form 7512 should not be completely eliminated. The common trade practice is to maintain a hard-copy of the actual CBP Form 7512 which is used as an attachment to the bill of lading to properly identify the shipment as an in-bond shipment. It accompanies the shipment as it moves from trucking terminal to trucking terminal.

Eliminating the CBP Form 7512 form will require many carriers to redesign their internal systems at great expense.

CBP Response: Many carriers are already filing in-bonds electronically and are not using a paper CBP Form 7512. While there are some carriers that will have to revise their business practices as a result of CBP's efforts to modernize the in-bond process, CBP

does not plan to maintain a two tiered in-bond system with both electronic filing and paper filing in order to accommodate those carriers that currently use the CBP Form 7512 for tracking purposes. If, for their own use for internal tracking purposes, carriers prefer a hard-copy document to accompany the shipment, carriers can choose to create a form with the same information as the CBP Form 7512 or print a hard-copy of the electronic in-bond application.

Comment: Many bonded carriers are not automated and rely upon the CBP Form 7512 as their control document. Unless CBP is prepared to mandate that bonded carriers become AMS certified, the CBP Form 7512 will continue to be needed.

CBP Response: CBP is requiring automated filing of in-bond entries. How bonded carriers manage their own internal controls is up to each bonded carrier.

3. Information Required

Comment: The current flow of commercial information is not structured in such a way that all of the new in-bond information requirements would be readily available. CBP should work with the various sectors of the trade community in identifying what information is truly necessary, and in developing a phased-in compliance schedule that would afford business the time to adjust its procedures to the new regime. CBP's program for implementation of the ISF requirements is a good model for phased-in compliance.

CBP Response: CBP worked closely with the various sectors of the trade community before publishing the NPRM regarding the general changes to the in-bond system that were being considered. CBP received and took into account extensive feedback from the trade community in the formulation of the NPRM. Moreover, as a result of the comments CBP received in response to the NPRM regarding the required information on the in-bond application, CBP is making several changes regarding these requirements so that they are less burdensome but still provide CBP with the necessary information. The rule will have a 60-day delayed effective date to enable the trade to make required adjustments to comply with the rule. CBP is also providing a 90-day flexible enforcement period similar to that used for implementation of the ISF requirements that will start from the effective date of this rule. Additionally, CBP will work closely with the trade to resolve

compliance issues that the trade might experience as a result of this rule.

Comment: The list of proposed changes in the NPRM includes a statement that an in-bond application must be filed for each conveyance transporting the shipment. However, this requirement is absent from the proposed regulatory language. Further guidance should be given regarding the requirement to file an in-bond for each conveyance.

CBP Response: The statement in the list of proposed changes of the NPRM that an in-bond application must be filed for each conveyance was incorrect. A separate in-bond will not be required for each conveyance. One in-bond application can cover merchandise that is transported by multiple conveyances.

Comment: Some carriers move in-bond merchandise via centralized hubs wherein in-bond merchandise is transported to a hub and consolidated in a new container before being transported to the port of exportation. If an in-bond shipment is moved in this manner, will one T&E application covering the entire movement of the in-bond merchandise be acceptable?

CBP Response: Only one T&E in-bond application is necessary to move an in-bond shipment from the origination port to the port of exportation. In-bond merchandise can be moved from one container to another container in a centralized hub, if the sealing procedures in § 18.4 are followed. However, multiple in-bond shipments from different origination ports cannot be entered under a single T&E and consolidated in a centralized hub.

4. Updating and Amending the In-Bond Record

Comment: Will CBP allow all data elements to be amended within the in-bond record or will there be restrictions? CBP must provide guidance with respect to which elements can be amended.

CBP Response: Prior to departure from the originating port, all data elements related to the in-bond may be updated or amended. After departure (during transit), the in-bond data may not be updated or amended, except for the quantity, destination, and seal numbers. If the reported quantity is not correct or if it changes, the in-bond record must be updated. Updating the quantity does not relieve the initial bonded carrier from liability for any shortages based on the quantity originally reported in the in-bond application. If the seal number is not known when the in-bond application is filed, the in-bond record must be updated with the seal number within

two business days. It is also necessary to update the in-bond record with notice and proof of export and with information regarding divided shipments at the port of exportation.

Comment: Will other parties be allowed to amend the in-bond record or does the amendment have to be made by the original in-bond filer? CBP needs to define what is considered “permission.” The filer is not the appropriate party to grant permission to amend the official record and this authorization should be obtained from the owner of the commercial information since that is the true party in interest. Guidance should be provided indicating the appropriate method of notification or permission to both CBP and other parties who are authorized to make changes.

CBP Response: Any party that files an in-bond application as provided in proposed § 18.1(c) can amend the in-bond record. This may be the carrier or agent that is authorized by the carrier to obligate the carrier’s bond and that brings the merchandise to the origination port; the carrier, or authorized agent of the carrier that accepts the merchandise under the carrier’s bond; or any person who has a sufficient interest in the merchandise as shown by the bill of lading, manifest or other document. To provide additional clarity, CBP is changing proposed § 18.1(h) to eliminate the requirement that the party updating or amending the in-bond record receive “permission” from the “filer” and requiring instead that the party that is updating or amending the in-bond application obtain the “authorization” of the “party whose bond is obligated.” CBP is requiring “authorization” from the party whose bond is obligated, as opposed to the filer because the party whose bond is obligated bears the responsibility for ensuring the proper movement of the merchandise.

Comment: CBP should explain how the amending and updating of the in-bond record will work (process, time limits for amending, etc.).

CBP Response: The in-bond record can be updated and amended by entering the new information in the CBP approved electronic system. The system will automatically update the in-bond record, barring any system edits in place prohibiting the update. CBP will provide additional procedures for amending and updating the in-bond record as necessary, using its normal trade outreach and by posting the information on the CBP Web site. CBP is also changing proposed § 18.1(h) in the final rule to specify a timeframe for amending the in-bond record. That

timeframe is “within two business days of the event that requires amendment.”

5. Who May File

Comment: Proposed § 18.1(c)(3) stating that a transportation entry may be filed by “[a]ny person who has a sufficient interest in the merchandise as shown by the bill of lading or manifest, a certificate of the importing carrier, or by any other document satisfactory to CBP” is an overly broad grant of authority. CBP should limit the term “sufficient interest” to those persons with a property right in the merchandise or those persons who have been properly authorized by the owner of the goods. The right to file an in-bond application should be further restricted to the originating bonded carrier or a licensed customs broker. CBP should identify examples of such “other documents” that will be acceptable to CBP to include a properly executed power of attorney, a letter of authorization, etc. Alternatively, the term “other documents” should be deleted because it is unnecessary.

CBP Response: The quoted language in proposed § 18.1(c)(3) is not new. It is derived from § 18.11(b) of the existing regulations which similarly allows a person who has sufficient interest in the merchandise as shown by the bill of lading or manifest, a certificate of the importing carrier, or by any other document satisfactory to CBP to transport merchandise in-bond. CBP has not experienced problems with parties without sufficient interest transporting merchandise in-bond and prefers to maintain the existing standard to facilitate trade. With regard to the documents that are acceptable to demonstrate sufficient interest, CBP believes it should provide the trade with some flexibility to present documentation to demonstrate that a party has sufficient interest in the merchandise.

Comment: As filing of the in-bond is often made by an authorized agent of a party with sufficient interest, the proposed language in § 18.1(c)(3) should be updated to read, “[a]ny person, or the authorized agent of any person with sufficient interest in the merchandise, as shown by the bill of lading or manifest, a certificate of the importing carrier, or by any other document satisfactory to CBP.”

CBP Response: CBP agrees. CBP is modifying the regulatory text in § 18.1(c)(3) to allow the authorized agent of any person who has a sufficient interest in the merchandise to file the in-bond application.

Comment: Proposed § 18.1(c)(1) refers to a transportation entry made by “the

carrier that brings the merchandise to the origination port.” CBP should modify this to read: “the carrier, or authorized agent of the carrier, that brings the merchandise to the origination port.” Proposed § 18.1(c)(2) refers to a transportation entry made by “the carrier that is to accept the merchandise under its bond or a carnet for transportation to the port of destination or port of exportation;” CBP should modify this provision to read “the carrier, or authorized agent of the carrier, that is to accept the merchandise under its bond or a carnet for transportation to the port of destination or port of exportation;”

CBP Response: CBP agrees and is changing proposed §§ 18.1(c)(1) and (c)(2) to include the phrase “or authorized agent of the carrier.”

Comment: The referenced “certificate of the importing carrier” is not defined. This reference is in addition to a person having an interest in the shipment as shown by the bill of lading or manifest, so it is vague and confusing to refer to an undefined “certificate.” CBP should delete this reference as it may be unnecessary, or define what may constitute an acceptable certificate.

CBP Response: The provision allowing for the use of a “certificate from the importing carrier” in proposed § 18.1(c)(3) is contained in the existing regulations in § 18.11(b). A power of attorney or letter of authorization would constitute an acceptable certificate. CBP will not establish a specific definition of what constitutes an acceptable certificate, but will accept a document or electronic request from the importing carrier that authorizes another party to file an in-bond application.

Comment: CBP should require the party obligating the bond to provide all shipment information to the carrier when requested for investigation and audit purposes.

CBP Response: CBP will not require third parties to provide shipment information to the carrier. This is a matter to be resolved contractually between carriers and those parties with whom they do business. However, as provided in 19 U.S.C. 1508(a)(1)(B) and 19 CFR 163.2, persons who knowingly cause the transportation of merchandise carried or held under bond are responsible for maintaining the appropriate in-bond records, which must be supplied to CBP upon request.

6. Licensed Customs Brokers

Comment: Only a licensed customs broker should be able to file the in-bond application; bonded carriers should only be able to file in limited cases when they simply file data without

exercising discretion. The classification of merchandise, even at the six-digit level, and determining the “admissibility of merchandise” is customs business and should be done only by a licensed customs broker. Customs brokers have the knowledge and experience to identify prohibited and restricted merchandise and will more accurately identify whether merchandise is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation.

CBP Response: An entry for transportation in bond is an excepted activity pursuant to 19 CFR 111.2(a)(2)(iv) for which a customs broker’s license is not required. *See* 19 CFR 111.2(a)(2)(iv). Moreover, customs business does not involve the mere electronic transmission of data received for transmission to CBP, but does involve classification for entry purposes. *See* 19 CFR 111.1. The six-digit HTSUS number required on the in-bond application is necessary to ensure cargo safety and security and not to determine merchandise entry procedures that fall within the scope of customs business. This is in contrast to a 10-digit HTSUS number which does involve classification for entry purposes. Although the proposed rule does require more information to be provided than in the past, this information is generally available to the carrier and does not require the expertise of a customs broker and does not require making admissibility determinations. Moreover, as discussed in Section I.B.3., Description of the Merchandise, and Section II.C., New Information Requirements for In-Bond Shipments, CBP is requiring much less information about the in-bond merchandise on the in-bond application than was proposed. For example, CBP is eliminating the requirement in proposed § 18.1(d)(1)(ii) for carriers to provide the rule, regulation, law, standard or ban relating to health, safety or conservation enforced by CBP or another government agency that is applicable to the in-bond merchandise. This, and other changes relating to the description of the merchandise, will lessen the burden on carriers and ensure that admissibility determinations are not required in order to file an in-bond application.

Comment: The bonded carrier should only be allowed to file the in-bond application when it does not have to make decisions regarding the classification or whether merchandise is restricted, prohibited, or subject to a rule, regulation, law, standard or ban relating to health, safety or conservation. The bonded carrier should be allowed to file the in-bond

application only when it has received written documentation from a party that (1) has the right to make a consumption entry, (2) has an active continuous customs importer bond, (3) is required to exercise reasonable care in ascertaining and proving all of the required data elements to the bonded carrier, and (4) is responsible for liquidated damages on its continuous customs bond and/or penalties under 19 U.S.C. 1592 for false, inaccurate or incomplete information.

CBP Response: CBP will not restrict who can file an in-bond application in the manner proposed in this comment.

7. Unauthorized Use of a Bond

Comment: Several commenters raised concerns related to a bonded party’s ability to restrict usage of its bond by other parties and to monitor the obligations made to its bond. These commenters said that the bonded party should be able to prohibit the obligation of its bond by third parties. In addition, these commenters indicated that the bonded party should be able to see, within the new proposed automated paperless environment, all in-bond movements that obligate its custodial bond. Without such functionality in the electronic in-bond system, the bonded party may be exposed to fraudulent activity and liquidated damages assessed by CBP when a carrier files an in-bond application without authorization from the bonded party.

CBP Response: We agree that the bonded carrier should be able to look into the in-bond record and restrict usage of its bond by other parties. In ACE and QP/WP, bonded parties can prevent the unauthorized use of their bond by restricting use of their bond by other parties and by setting conditions on the use of their bond. These in-bond systems are designed to allow an approved bonded carrier that has a CBP-approved ACE account to allow restricted or unrestricted use of its bonds. If the bonded carrier’s account is unrestricted, any other party may open an in-bond application using the bonded carrier’s account number. If the bonded carrier restricts the usage of the bond account number, that carrier can log into its account and select the other parties that are authorized to obligate its bond. If the bonded carrier selects parties that are authorized, all other parties will be unauthorized and any attempt to use the bond by an unauthorized user will be rejected. In addition, the bonded party will receive notifications when the in-bond record is amended or updated if the in-bond filer designates the bonded party as a Secondary Notify Party (SNP) in ACE.

A party who moves bonded merchandise without authorization, either as a non-bonded carrier holding itself out as a bonded carrier or as a non-bonded carrier using the identity/bond information of a bonded carrier without the latter’s authorization, may be subject to a penalty pursuant to 19 U.S.C. 1595a(b) for violation of 19 U.S.C. 1551, 19 CFR 18.1 and 19 CFR 112.12, or 19 U.S.C. 1592.

8. Procedures

Comment: Under current electronic in-bond processing in AMS, it is possible for an ocean carrier’s taxpayer identification (IRS) number to be used by a third party to file an in-bond movement without the carrier’s knowledge. While the ACE M1 functionality will allow ocean carriers to better control which parties are authorized to use the carrier’s IRS number to file an in-bond application, carriers need to be able to know when their bonds are used by a third party so that the carrier can close any in-bond applications filed against the carrier’s IRS number that the third party filer fails to close.

To enable ocean carriers to monitor when their IRS numbers are used to file in-bonds, CBP should modify the EDI in-bond message set for M1 to include two additional pieces of information: (1) The SCAC of the bonded party, and (2) the SCAC or filer code of the party that filed the initial in-bond application.

CBP should also develop a mechanism within ACE M1 that would allow an ocean carrier to electronically close an in-bond that the in-bond filer created in the Automated Broker Interface (ABI) using the ocean carrier’s IRS number but then never closed in ABI. This would enable ocean carriers, none of whom use ABI (a broker filing system) to use ACE M1 to close in-bonds cut against the carrier’s IRS number.

CBP Response: CBP agrees that more accurate information should be provided to bonded parties regarding the use of their bond and thanks the commenter for these suggestions. Now that the ACE eManifest Rail and Sea (M1) has been successfully deployed, enhancements such as this will be considered and prioritized based on the needs of the trade and CBP. M1 currently allows any EDI filer (ABI or carrier) to provide updates on in-bond transactions including arrivals and exports. CBP encourages the party with the most accurate information to provide those updates.

9. Change of Foreign Destination

Comment: CBP should clarify the difference between proposed § 18.23 requiring the carrier to notify CBP of a change in foreign destination of an in-bond shipment and the requirement in proposed § 18.5 that carriers obtain authorization from CBP for diversion of an in-bond shipment.

CBP Response: Section 18.5 requires the filer of the in-bond application to submit a request to divert merchandise via a CBP-approved EDI system. A diversion occurs when the U.S. port for which the in-bond merchandise is destined is changed and the merchandise is shipped to a different port. Section 18.1(h) requires the carrier to update information included in the original in-bond application, such as the first foreign port, when there are changes. Section 18.23 concerns the requirement to update information in the in-bond application as it applies to TE and IT shipments. CBP is adding language to § 18.23 to make this clearer.

New Information Requirements for In-Bond Shipments

10. New Information Requirements Generally

Comment: Many commenters expressed concern that the new information requirements of the in-bond application are too burdensome.

CBP Response: The requirements proposed in the NPRM, when considered as a whole, potentially would require more information from carriers. Accordingly, CBP is making several changes to the proposed regulations in response to these comments. First, CBP is removing the requirement in proposed § 18.1(d)(1)(ii) that if the party submitting the in-bond application knows that the merchandise is subject to a rule, regulation, law, standard or ban relating to health, safety or conservation, the filer must provide the rule, regulation, law, standard or ban to which the merchandise is subject as well as the government agency responsible for enforcing the rule, regulation, law, standard, or ban. In its place, CBP is requiring that merchandise subject to detention or supervision by a U.S. government agency be described with sufficient accuracy to enable the agency concerned to determine the contents of the shipment. This is a requirement in existing § 18.11(e). Second, CBP is removing the requirement in proposed § 18.1(d)(1)(iii) that the in-bond filer identify prohibited or restricted merchandise. Third, CBP is removing the requirement in proposed § 18.1(d)(1)(iv) to provide additional

information for all in-bond shipments of textiles and textile products. Fourth, CBP is making optional the requirement in proposed § 18.1(d)(1)(v) that the filer of the in-bond application must provide information regarding merchandise for which the U.S. Government, foreign government or other issuing authority has issued a visa, permit, license, or other similar number or identifying information. In lieu of the above requirements and to ensure that CBP is still able to assess security and health and safety threats, CBP is changing proposed § 18.1(l)(i) to require the six-digit HTSUS number on the in-bond application in all instances. The six-digit HTSUS number is one of the required data elements for all merchandise arriving by vessel on the Importer Security Filing (ISF).

11. Special Classes of Merchandise

Comment: Proposed § 18.20(a) prohibits the use of a transportation and exportation (T&E) entry, with no exceptions noted for several classes of merchandise as detailed at § 18.1(l), namely (1) health, safety, and conservation; (2) plants and plant products; (3) narcotics and other prohibited articles; (4) non-narcotics; (5) explosives; and (6) livestock. This conflicts with proposed § 18.1(l), which allows a T&E entry to be filed if approved by the appropriate governmental agency, e.g., explosives as regulated by ATF, DOT, and USCG. Additionally, if a T&E entry may not be utilized for these specified commodities, two separate in-bond movements would be required to move the shipment through the United States to its final destination, i.e., an Immediate Transportation (IT) to the port of exportation and a separate Immediate Exportation (IE) at the port of destination. This would create an unnecessary increase in work for both CBP and affected carriers and filers.

CBP Response: Proposed § 18.20(a) does not prohibit the use of T&E entries for the named classes of merchandise in all cases. It specifically allows for T&E entries, subject to the provision of § 18.1(l). There is no conflict between the two provisions. While proposed § 18.1(l) imposes restrictions on the named classes of merchandise, it does not prohibit the use of T&E entries. It merely requires authorization from the appropriate government agency to ship these classes of merchandise under a T&E entry. Moreover, these are not new restrictions on T&E entries. Existing § 18.21 provides for these same restrictions on T&E entries. This rule makes these restrictions applicable to all

in-bond entries by moving them to § 18.1(l).

Comment: CBP should amend proposed § 12.11 to allow plant or plant product shipments subject to Animal and Plant Health Inspection Service/Plant Protection and Quarantine Programs (APHIS/PPQ) permit conditions to be shipped from the port of first arrival to another port for proper inspection at an APHIS/PPQ facility, without an in-bond application if all CBP requirements have been met.

CBP Response: CBP disagrees. Until such time as the plant or plant product has been inspected or treated by APHIS/PPQ, the merchandise must remain under CBP bond, which insures compliance with APHIS/PPQ requirements.

12. Quantity

Comment: Proposed § 18.1(d)(1)(vi) states that “the quantity of the merchandise to be transported to the smallest piece count” must be provided. This is a confusing standard and clarification should be provided as to whether this means that the quantity will be reported at the smallest external packaging unit or something different, such as the smallest piece count. CBP should use the “smallest exterior packing unit” as the standard for providing the quantity of the merchandise. This is a workable standard and the data is readily available and verifiable to the carrier. “The smallest piece count” standard would be burdensome as manifests and bills of lading normally do not contain this information and verification may be difficult.

CBP Response: CBP concurs and is changing proposed § 18.1(d)(1)(vi) to require the reporting of the quantity using the “smallest exterior packing unit” standard. This will enable carriers to verify the quantity of the goods they are transporting and ensure that there is no shortage.

Comment: CBP should modify proposed § 18.1(d)(1)(vi) to require that the quantity of merchandise to be transported be reported in the in-bond application as the quantity used in the bill of lading and or manifest. This will ensure consistency in reporting between the application filer and CBP as well as amongst all trading partners involved in the transportation movement of the in-bond shipment.

CBP Response: CBP disagrees. The quantity of merchandise used in the bill of lading or the manifest may not reflect the actual quantity, as required in § 18.1(d)(1)(iv). CBP needs to ensure the entire shipment is accounted for at the destination port or port of exportation.

Proposed § 18.1(d)(1)(vi) requires the quantity of merchandise to be transported in-bond to be reported and will specify how that quantity is to be reported. As discussed in the prior comment response, the required quantity standard will be the smallest exterior packing unit.

Comment: CBP should remove proposed § 18.1(d)(4), which requires the initial bonded carrier to assert that there is no discrepancy between the quantity of the goods received from the importing carrier and the quantity of goods delivered to the in-bond carrier for transportation in-bond. Quantity information is already required under proposed § 18.1(d)(1)(vi) and the initial bonded carrier cannot make the assertion in good faith without independently verifying the quantities prior to importation which is impractical and costly. Alternatively, CBP should change proposed § 18.1(d)(4) to provide that by submission of an in-bond application, the initial bonded carrier asserts that there is no “known discrepancy” between the quantity received from the initial carrier and quantity delivered to the in-bond carrier, unless the arriving carrier and the in-bond carrier are the same, in which case the provision does not apply.

CBP Response: Proposed § 18.1(d)(4) does not impose new requirements on bonded carriers. Under § 18.8 of the current regulations, if an in-bond shipment arrives at the destination port and the quantity of goods that arrives is less than the quantity manifested, the bonded carrier is liable for the shortage. This rule does not change that requirement. However, CBP has concluded that proposed § 18.1(d)(4) is unnecessary as it is covered in § 18.8. Therefore, CBP is removing this provision.

Comment: Bonded carriers need to be able to file manifest discrepancy reports after the in-bond shipment arrives at the port of destination. The discrepancy reports would reflect the quantity of good actually received by the in-bond carrier when the container is unloaded at the port of destination.

CBP Response: CBP disagrees. CBP is not creating a new manifest discrepancy reporting system for in-bond shipments which would insulate carriers from liability for a shortage. Although carriers must use the procedure described in § 18.1(h) to update the in-bond record to report any discrepancy in quantity of in-bond merchandise, the carrier is responsible for the quantity of goods reported in the in-bond application.

13. Location of the Merchandise

Comment: Proposed § 18.1(j) requires the reporting of the “[p]hysical location of the merchandise within the port.” The term “physical location” should be defined and CBP should provide additional detail as to the level of specificity required; e.g., the Facilities Information and Resources Management System (FIRMS) code if known, or dock location, pier, street, address, city, etc. FIRMS codes need to be established for border crossing locations where carriers do not have a physical presence.

CBP Response: CBP agrees that the proposed text is not clear and leaves room for error in providing the physical location of the merchandise. Therefore, CBP is changing proposed § 18.1(j) to require the reporting of the FIRMS code rather than a description of the physical location of the goods. FIRMS codes are used to identify a specific physical location. Locations, e.g., warehouses, with FIRMS codes that are used solely for the purposes of providing the location of in-bond merchandise are not required to be bonded facilities, unlike other locations with FIRMS codes. However, FIRMS code locations that are used solely for reporting the location of in-bond merchandise cannot be used for other purposes for which a bond is required, e.g., manipulation of the merchandise. If the merchandise is sitting on the dock, the FIRMS code of the terminal should be provided.

Comment: Does the new rule allow truck carriers to use their terminal facilities as the arrival destination and use that location to report to CBP?

CBP Response: Yes. However, if there is not an existing FIRMS code for the terminal facility the truck carrier company will need to obtain one.

Comment: Will CBP be updating or changing the current FIRMS code process? CBP should centralize the process at headquarters, rather than have the ports responsible.

CBP Response: CBP is not updating or changing the process for obtaining a FIRMS code. The current process is to obtain a FIRMS code at the local port. A member of the trade requests a FIRMS code via a letter to the port director on company letterhead. An Officer in the POE creates a FIRMS file in ACE for the requesting party and CBP mails the FIRMS code to the requesting party. However, CBP headquarters will continue to oversee the process.

Comment: CBP should require the reporting of the FIRMS code of the bonded location “at which the in-bond merchandise is arrived” instead of the physical location of the in-bond merchandise within the port. For

shipments that will be exported across a land border, CBP should accept an alternate location code if a FIRMS code does not exist for the location where the goods will be exported.

CBP Response: CBP is requiring in § 18.1(j) that the bonded carrier report the FIRMS code for the arrival of all in-bond merchandise at the destination port and port of exportation.

14. Destination

Comment: The reporting of the “ultimate destination” is a new requirement and CBP should explain what “ultimate destination” means. The carrier that files the electronic in-bond application has no way to know the “ultimate destination” of a particular in-bond shipment. The carrier can only provide CBP with information about the final destination of the cargo movement under the carrier’s contract of carriage with the shipper. The carrier does not know what the shipper does with the cargo after the carrier has delivered the cargo according to the contract of carriage. The proposed rule should be amended to clarify that for a carrier filing an in-bond application the final destination of the cargo movement under the carrier’s contract of carriage with the shipper is acceptable.

CBP Response: To address the comment above and avoid inconsistency with other export control laws and regulations, CBP is no longer using the term “ultimate destination” in § 18.1(d)(1)(vi). CBP is making changes to § 18.1(d)(1)(vi) to clarify that for IT shipments, the port of destination in the United States must be provided, and for T&E and IE shipments, the port of exportation and the first foreign port must be provided.

Comment: Any requirements associated with the destination beyond the port code could significantly erode the confidentiality of sensitive customer information.

CBP Response: CBP routinely considers commercial information on entry documents as confidential business information protected by the Trade Secrets Act, 18 U.S.C. 1905, and therefore subject to exemption 4 of the Freedom of Information Act (FOIA) protecting trade secrets and commercial or financial information. CBP does not require businesses to designate that information as confidential. See 19 CFR 103.35. CBP would consider the destination of the in-bond merchandise to be confidential and privileged under exemption 4 of the FOIA and would not release this information.

Comment: There is often a need to move in-bond jet fuel to airports that operate with international flights.

Current systems allow for the use of a multi-destination field. CBP should recognize the operational realities of the jet fuel and airline business and specifically address in the final rule that in-bond movements with multiple destinations may continue to be used.

CBP Response: This rule will not specifically address multi-destination fields currently used in some situations to move jet fuel in-bond. This is an operational issue. However, CBP is not planning to limit or stop the use of this practice at this time.

C. In-Transit Time

1. In-Transit Time Generally

Comment: The proposed 30-day transit time is sufficient to arrive at the destination port. It is more than sufficient time for carriers to enter and exit the United States with Canadian domestic goods.

CBP Response: CBP agrees with these comments, except with respect to in-bond shipments transported by barge, as addressed below.

2. In-Bond Shipments Transported by Barge

Comment: The current 60-day in-transit time for in-bond shipments that travel by barge should be preserved. Barge delivery times frequently exceed 30 days. Industry data indicates that average barge transit times between 26 common origination and destination points for inland barge transportation routinely exceed the proposed 30-day in-transit time. In addition to average transit times that may exceed 30 days, barge in-transit times are also frequently impacted by other factors such as fog, icing, high water, low water, lock closure, maintenance, and congestion that further lengthen transit times beyond 30 days.

CBP Response: Due to the special circumstances noted above pertaining to travel by barge, CBP agrees that the proposed 30-day in-transit time for in-bond shipments transported by barge is not adequate and is changing proposed § 18.1(i)(1) to allow for a 60-day in-transit time for barge shipments.

3. Extension of In-Transit Time

Comment: Requests for an extension of the 30-day in-transit time should be considered approved unless CBP denies the request. The process should be automated and extensions should be granted in 30-day timeframes. The process for requesting an extension should be explained in more detail.

CBP Response: CBP disagrees that extensions should be automatically approved. CBP will consider on a case-

by-case basis whether to grant an extension of the in-transit time period and if so, the length of the extension. CBP is changing proposed § 18.1(i)(2) to clarify that the decision to extend the in-transit time period is within the discretion of CBP. CBP is also changing proposed § 18.1(i)(2) to provide factors that may be considered in its decision, which include extraordinary circumstances beyond the control of the parties.

With regard to automation, the functionality does not currently exist to accept and approve extensions electronically via electronic EDI. Accordingly, all requests for an extension must be made to the port director of the port of destination or port of exportation, as appropriate. See § 18.1(i)(2).

Comment: CBP should issue the denial of an extension request within 24 hours of the request and provide a reason for the denial.

CBP Response: CBP will consider each extension request on a case-by-case basis and will endeavor to issue any denials within 24 hours of receiving the request. CBP will not provide the reason for denying an extension request since the request may be denied for law enforcement purposes.

Comment: CBP should continue to take into account and provide extensions for rail cars that have been delayed due to rail cars being unavailable to transport in-bond merchandise or due to other transit issues. CBP should continue to provide reasonable relief from the 30-day limit.

CBP Response: CBP will consider requests for extensions on a case-by-case basis.

Comment: Can the request for an extension be made for all cargo covered on the bill of lading, or must the request for an extension be made for each individual in-bond entry?

CBP Response: A request for an extension must be made for each individual in-bond entry. CBP will not grant a blanket extension for all shipments covered by a bill of lading.

Comment: The proposed rule states CBP may extend the in-transit time if delays are caused due to the examination or inspection of the merchandise by CBP or another government agency. Because this issue can result in irregular deliveries due to no fault of the carrier, CBP should change “may extend” to “will extend.” The in-transit timeframe should be revised to account for the delay and recorded as part of the in-bond application record and communicated to the in-bond filer.

CBP Response: CBP agrees that proposed § 18.1(i)(1) should be changed to address this issue. The new text will state that when the merchandise is subject to examination or inspection by CBP or another government agency, the time for which the merchandise is held due to the examination or inspection will not be considered part of the in-transit time. Because of this change, it is unnecessary to change “may extend” to “will extend.”

Comment: CBP should provide examples of circumstances in which CBP will grant an extension “for some other reason.”

CBP Response: In order to clarify proposed § 18.1(i)(2), CBP is removing the phrase “for some other reason.” In its place, CBP is changing proposed § 18.1(i)(2) to provide factors that may be considered in its decision to extend the in-transit time period. CBP will consider all requests for an extension on a case-by-case basis.

Comment: Some in-bond shipments cannot be made within the mandatory in-transit time due to logistical issues that are beyond the control of the shipper. For example, a vessel shipment may contain 50 coils of steel, which would need to be divided into at least 25 truckloads. Due to truck shortages and bad weather it is not uncommon for shipments to take longer than the in-transit time for trucks of 30 days.

CBP Response: CBP will take into account logistical issues such as the one described above when considering a request for an extension of the in-transit time.

4. Shortening of In-Transit Time

Comment: Proposed § 18.1(i)(3) provides that CBP may shorten the in-transit time. CBP should clarify and explain why the in-transit time would ever need to be shortened once the application has been authorized and no holds have been placed on the shipment. CBP should provide more information and justification as to when this authority might be exercised so that the trade can more adequately comment.

CBP Response: The in-transit time will only be shortened when required by another agency’s transit requirements. The primary reason why CBP would shorten the in-transit time would be to comply with U.S. Department of Agriculture (USDA) statutory requirements related to merchandise moving on a USDA permit. Other government agencies may also require shortened transit periods.

Comment: Does the proposal that “CBP will provide notice of a CBP-shortened in-transit time with the movement authorization,” include

notification by other government agencies of shortened in-transit times? CBP needs to ensure that there are procedural protections for the importer and the carrier to avoid arbitrary and costly restrictions.

CBP Response: The in-transit time will only be shortened in order to comply with another agency's transit requirements. CBP will provide notice to the carrier to facilitate compliance. To clarify this, CBP is changing proposed § 18.1(i)(3) to provide that "CBP will provide notice of a government-shortened in-transit time with the movement authorization."

Comment: The "shortened in-transit time" information should be transmitted as a distinct data element or disposition code that is sent to filers. This code will ensure that the carrier will be aware of the restriction, and the carrier may then examine the text explanation of the shortened time for the details of the restriction. Instructions from CBP that require the trade to take any action must not be included as a remark to formal status messages because free form messages may be mistyped by the initiator, truncated by the system, or misinterpreted by the recipient.

CBP Response: CBP will communicate to the carrier via EDI when the in-transit time has been shortened. CBP agrees that the creation of a disposition code is a good idea and will endeavor to create a new disposition code for this purpose.

5. Start of In-Transit Time

Comment: The current regulations begin the running of the 30-day in-transit time at the time the forwarding carrier receives the merchandise. In many seaports, it is not uncommon for containers to be delayed within a port terminal for myriad reasons, two to four days on average, before they are delivered to the forwarding carrier. Beginning the in-transit time from the time of the filing of the in-bond application does not take these routine delays into account. The language of existing § 18.2(c)(2) that allows the forwarding carrier to report the date on which it received the merchandise at the port of arrival from the importing carrier should be retained.

CBP Response: CBP has analyzed in-bond movements including intermodal movements and determined that beginning the in-transit time at the time of filing the application would not seriously impinge on the 30-day (60-day for barges) in-transit time to deliver the cargo, even, taking into account a 2- to 4-day delay at the port. Requiring the forwarding carrier to report when it receives the merchandise makes determining when the in-transit time

begins more cumbersome, and makes the system dependent on a party whose bond may not be obligated. Extensions of the transit time can be requested in the event of a delay at the port.

Comment: In the ocean environment, in-bond authorization may be provided up to 30 days prior to vessel arrival at the first U.S. seaport. Taking this into account, the 30-day transit time should not start until the conveyance has arrived at the first U.S. port and all government holds have been removed.

CBP Response: CBP agrees. CBP is changing proposed § 18.1(i)(1) to provide that the in-transit time will not begin until vessel arrival or CBP movement authorization, whichever is later.

Comment: In-bond merchandise traveling through the United States and destined for Mexico often requires several days at the port of exportation on the United States-Mexico border for various legitimate reasons before the merchandise can be imported into Mexico. Generally, the merchandise is transported to the port of exportation by the originating bonded carrier. Next, a new in-bond application is filed and the merchandise and bond liability is transferred to a local bonded carrier for exportation to Mexico. Taking commercial realities of importing goods into Mexico into consideration, if the originating bonded carrier arrives at the port of exportation without a sufficient number of days remaining before the expiration of the 30-day maximum time period, it will be difficult to find a succeeding bonded carrier to accept liability for the merchandise knowing that delays are anticipated and there is high risk of not being able to export the merchandise timely. This will likely cause in-bond merchandise to have to enter a foreign trade zone or customs bonded warehouse to avoid liquidated damages for irregular delivery. Alternatively, Mexican importers may divert this business outside of the United States for direct shipment to a Mexican sea port, which would be devastating for the local bonded carriers in Laredo, Texas.

CBP Response: CBP recognizes that there are many circumstances in which it may not be practicable to export in-bond merchandise within 15 days of arrival at the port of exportation. However, shippers will be responsible for ensuring that basic logistical issues are resolved. In the scenario presented, the originating bonded carrier will have 30 days in which to deliver the merchandise to the port of exportation, at which point the arrival must be reported within two business days. The reporting of the arrival of the

merchandise at the destination port completes the in-bond movement for purposes of meeting the in-transit time requirements. The merchandise must then be exported within 15 days. If the merchandise cannot be exported within 15 days after arrival, the original bonded carrier can file an immediate exportation entry. This will provide an additional 15 days in which to export the merchandise. The carrier can also request permission to retain the goods within the port limits for an additional 90 days pursuant to § 18.24 or admit the merchandise into a FTZ, before the 15-day limit expires.

6. Procedures

Comment: All parties involved in an in-bond shipment should be able to verify when the in-bond shipment was authorized for movement and whether they are delivering the merchandise within the required timeframe.

CBP Response: Within ACE, the carrier filing the in-bond application has the ability to provide multiple Secondary Notify Parties (SNPs). SNPs receive the same status messages as the carrier. It is up to the parties involved in the transportation of the merchandise to ensure that the appropriate parties are designated as SNPs.

Comment: Receipt of messages is a major issue for some non-vessel operating common carriers (NVOCCs). NVOCCs must be nominated by the vessel operating carrier (VOC) as a SNP in order to receive all status messages. Many VOCs have system constraints and can only accommodate one NVOCC per Master Bill of Lading even though AMS and ACE can accommodate more. An NVOCC automatically becomes a SNP when it creates an in-bond. However, it only receives status messages from the time it creates the in-bond.

CBP Response: SNPs receive the same status messages as the carrier. CBP already provides the ability to provide multiple SNPs within ACE. It is the responsibility of the parties involved in the transportation of the merchandise to ensure that the appropriate parties are designated as SNPs.

7. Intermodal Transportation

Comment: The reduction in in-transit times between ports from 60 days to 30 days is insufficient for those shippers who are moving goods with a mix of intermodal transportation (rail, barge and truck) and it might be difficult to meet the new 30-day requirement in these situations. This is especially true for those using barge movements. CBP should consider either keeping the current 60-day requirement for barges or

providing an exemption similar to what has been granted for pipelines.

CBP Response: As indicated in Section I.B.1., In-Transit Time for Shipments Transported by Barge, CBP is changing the proposed in-transit time for in-bond shipments transported by barge to 60 days. In this final rule, CBP is providing in § 18.1(i) that if any portion of the movement involves the movement of goods on a barge, the 60-day transit time will apply.

Comment: Which time period applies when there is a movement of petroleum products that involves the use of truck and pipeline? For instance, jet fuel could be moved in-bond via pipeline then transferred to a truck destined for an international airport. This movement could take significantly longer than 30 days. CBP should clarify whether the 30-day transit time applies to the entire movement when part of the movement involves transportation via pipeline.

CBP Response: The initial pipeline movement is an in-bond movement, but the duration of that transit time would not be included in the 30-day transit time limitation. To clarify this, CBP is adding a sentence to proposed § 18.1(i)(1) that expressly excludes pipeline shipments from the provisions of that section.

8. Report of Arrival

Comment: CBP proposes to reduce the arrival notification timeframe for an in-bond from two working days to 24 hours. Due to the mandatory electronic submission of in-bonds and the ability for any party to generate an in-bond without proper notification to all parties, it will be nearly impossible for a manual data entry process to happen within 24 hours when many in-bond shipments arrive over the weekend and holidays. CBP should retain the current 48-hour arrival timeframe or extend it to 72 hours to accommodate the various business models in the trade and lessen the cost of complying with the proposed rule.

CBP Response: CBP agrees that the 24-hour notification timeframe is too short. CBP is changing proposed § 8.1(j) to require the report of arrival to be filed within two business days after arrival at the destination port.

Comment: If CBP approval is required prior to removing the seal, this may impact the carrier's ability to timely report the arrival of the in-bond cargo.

CBP Response: Except as provided for in § 18.4, a sealed container cannot be opened prior to the reporting of the arrival. Pursuant to § 18.4(c), if it becomes necessary to remove seals for good reason, a responsible agent of the carrier may remove the seals, supervise

the transfer or handling of the merchandise and seal the conveyance, compartment, or container. CBP approval is not required. Once the arrival has been reported, the container can be opened and the in-bond merchandise removed.

Comment: For rail movements there are several check points within the port of destination area and it can take up to three to four days before the shipment finally reaches the point of unloading for vessel exports. What will be the point at which the arrival must be transmitted?

CBP Response: The arrival must be reported at the first point of arrival within the destination port.

Comment: The impact of the arrival on the transit and general order clock is significant to zone operations. It is imperative for CBP to explain the ramifications of arrival on both the transit clock and the transfer of bond liability.

CBP Response: The reporting of the arrival of the merchandise at the destination port completes the in-bond movement for purposes of meeting the in-transit time requirements. The arrival of the in-bond merchandise, however, does not transfer bond liability. The party whose bond is obligated is liable until the in-bond is closed out by the in-bond merchandise being exported, entered for consumption, admitted into an FTZ, or entered through the filing of some other type of entry.

Comment: Under the proposed rule, will the in-transit clock stop for an entire in-bond shipment when the first portion of an in-bond shipment arrives at the port of exportation or destination port?

CBP Response: The arrival of a portion of shipment at the destination port will not stop the transit period for the remainder of the shipment that has not yet arrived at the port. For multiple container movements, the arrival will be performed at the equipment/container level. This means that each equipment/container must arrive within 30 days and each equipment/container must be reported as arrived within two business days after its arrival.

9. General Order Merchandise

Comment: Does the reporting of arrival pursuant to proposed § 18.1(j) stop the in-transit clock and begin the general order clock of 15 days as provided in proposed § 18.1(k)?

CBP Response: No. Subsection 18.1(j) requires the report of arrival of any portion of a shipment after it arrives at the port. Only the arrival of the full shipment of in-bond merchandise at the destination port or the port of

exportation, not the reporting of arrival, stops the in-transit time and begins the 15-day general order period.

Comment: Reporting the arrival of the in-bond shipment at the destination port when the first portion of the shipment arrives and remaining portions have not arrived, creates a significant issue with the management of the general order clock. Allowing the clock to run on goods that may not have physically arrived creates a potential gap in the control of in-bond merchandise because merchandise that has "arrived" may not be physically present.

CBP Response: CBP agrees that the general order clock should begin when the last portion of the in-bond shipment arrives. Therefore, CBP is changing proposed § 18.1(k) to provide that the 15-day period for general order merchandise begins on the date of arrival "of the entire in-bond shipment" at the port of destination or port of exportation. When only a portion of a shipment arrives at the port of destination or port of exportation, the general order clock will generally not begin until the last portion of the shipment arrives. However, if part of a shipment does not arrive within the timeframe for completing the in-bond movement (30 days in most cases), the general order clock for the merchandise that has already arrived will start to run at the end of the applicable timeframe for completing the in-bond movement.

Comment: CBP should clarify that the total proposed in-bond transit time from the time of in-bond application authorization to the time of entry at the port of destination or export at port of exportation is a total of 45 days unless an extension has been granted.

CBP Response: The maximum in-transit time from the time of authorization of the in-bond application to arrival at the destination port is 30 days or 60 days for barges. Once the merchandise has arrived, the merchandise must either be entered or exported within 15 days of arrival or it will be subject to General Order and required notifications must be provided. It is incorrect to think that CBP will combine the two periods.

Comment: Reference to FTZ admission is omitted from the language regarding potential events that prevent goods from being sent to General Order. The language in proposed § 18.1(k) should be revised to include FTZ admission, such as: "Any merchandise covered by an in-bond shipment (including carnets) that has arrived at the port of destination or the port of exportation must be entered, exported or admitted to a foreign-trade zone pursuant to this part within 15 days

from the date of arrival at the port of destination or port of exportation, or in the case of goods authorized for direct delivery destined to a foreign-trade zone, within 15 days of the arrival at the zone or subzone pursuant to § 146.40(c)(3).”

CBP Response: CBP concurs that admission into an FTZ should be included as a means to prevent merchandise from going into General Order and is changing proposed § 18.1(k) accordingly. It is not necessary to include language regarding direct delivery pursuant to § 146.40 because the general reference to admission into an FTZ encompasses the procedures provided for in part 146.

Comment: It is unclear how limiting the time to 15 days will help CBP verify that the in-bond merchandise was, in fact, exported or entered.

CBP Response: The requirement to enter or export merchandise within 15 days of arrival at the destination port is consistent with existing regulations and is generally the current practice. See §§ 4.37, 18.12(d), 122.50, and 123.10. The changes in proposed §§ 18.1(k), 18.7, 18.12, 18.20, 18.25 and 18.26 are to ensure that there is uniformity within the customs regulations on this point.

Comment: The 15-day requirement to export or enter in-bond merchandise under proposed § 18.1(k) or to export merchandise pursuant to proposed §§ 18.7(a)(2), 18.20(f), 18.25(c) and 18.26(d) is not reasonable in many cases for goods intended to be exported by ocean carrier and for some petroleum shipments. Shippers sometimes need to hold in-bond merchandise after it has arrived in order to consolidate shipments from various vendors, which can take longer than 15 days.

Merchandise to be exported by ocean carrier can only be exported according to the schedule of the vessel bound for the foreign destination of the goods. Ocean carriers do not call at each port of exportation every 15 days for every foreign destination. In many cases goods are required to remain at the port of exportation after arrival for periods longer than the proposed 15-day limit. Similarly, many petroleum products that move in-bond cannot be exported within 15 days of arrival due to infrastructure limitations. CBP should revisit this provision to either extend the 15-day time period to a minimum of 30 days or clarify that standing exceptions to the 15-day requirement to export product will be provided by CBP based on the operational realities that exist for these type of product in-bond movements.

CBP Response: The 15-day requirement to export or enter the in-

bond merchandise is an existing requirement and is not a change to the GO requirements. CBP will not extend the timeframe to 30 days as this would be inconsistent with other regulations governing General Order merchandise. However, § 18.24(a) (Retention of goods within port limits) authorizes the port director to allow in-transit merchandise to remain within the port limits for up to 90 days. Additional 90-day extensions may be granted for up to one year from the date of arrival. Carriers can request an extension when they cannot export within 15 days of arrival due to scheduling or other issues.

D. Transfers

Comment: CBP received several comments regarding the transshipment provision in proposed § 18.3, which provides the procedures to be followed when in-bond merchandise is transferred from one conveyance to another. The main concern was with the requirement to report to CBP each time the merchandise was transferred from one conveyance to another. Because in-bond merchandise may be transferred several times during the course of its journey, this reporting requirement places a substantial burden on the bonded carrier liable under the bond.

CBP Response: CBP has taken these concerns into consideration and agrees that CBP does not need to be notified when in-bond merchandise is transferred from one conveyance to another. Accordingly, CBP is changing proposed § 18.3 by removing the requirement to notify CBP when merchandise is transferred from one conveyance to another and by clarifying when in-bond merchandise is transferred to a subsequent bonded carrier that assumes liability for the merchandise, a report of arrival must be filed for the in-bond shipment and the subsequent carrier must submit a new in-bond application pursuant to § 18.1.

Comment: A new in-bond application should be required when another bond is obligated. Since the notification of transshipment must include the name of the bonded carrier receiving the merchandise for shipment to the port of destination or port of exportation, it is implied that there could be a change of carriers. Is liability for the merchandise transferred to the new carrier's bond or is a new in-bond application required to transfer the liability?

CBP Response: CBP agrees that a new in-bond application is necessary when a different bond is obligated. Therefore, CBP is changing proposed § 18.3 in the final rule to require that when merchandise is transferred to a bonded carrier that assumes the liability of the

in-bond shipment, a report of arrival must be filed for the in-bond shipment and the subsequent carrier must submit a new in-bond application pursuant to § 18.1 for the merchandise to be transported in-bond.

Comment: Proposed § 18.3(a) requires that the notification to CBP via EDI be done before the merchandise can be transshipped, but proposed § 18.3(b) includes no such stipulation. CBP should make the requirements consistent for transshipment to a single conveyance (18.3(a)) and transshipment to multiple conveyances (18.3(b)).

CBP Response: The change that CBP is making to proposed § 18.3, *i.e.*, removing the requirement to notify CBP when merchandise is transferred from one conveyance to another, addresses the concerns expressed in this comment.

Comment: The carrier's difficulties in verifying the quantity of the merchandise to the piece count level is exacerbated when multiple carriers are involved. Because the transfer to multiple conveyances adds an additional level of complexity as compared to a transfer to a single conveyance, the potential for irregularities in the reporting and exchange of data in these situations is more prevalent.

CBP Response: The change that CBP is making to proposed § 18.3, *i.e.*, removing the requirement to notify CBP when merchandise is transshipped from one conveyance to another, reduces the likelihood of irregularities that may result in reporting and exchanging of data.

Comment: How will the trade identify the bonded carrier? It is assumed the bonded carrier can be identified by their SCAC code and/or EIN number where available. Please clarify in the final rule.

CBP Response: The bonded carrier will be identified by the carrier's SCAC or tax identification number (EIN), or, for air carriers, the International Air Transport Association (IATA) number.

Comment: The proposal to require the in-bond carrier to report, via EDI, the transfer of in-bond merchandise from one conveyance to another, presents a number of problems and questions. An ocean carrier that files an in-bond application, and on whose bond the shipment is authorized, often will assume the transportation responsibility for arranging the delivery of the goods to the in-bond destination, and this frequently involves numerous intermodal transshipments. Proposed § 18.3(b) and (c) would require the bonded carrier to provide multiple EDI notifications to CBP. This would make

the continued efficient transportation of such cargo impossible.

CBP Response: The change that CBP is making to proposed § 18.3, *i.e.*, removing the requirement to notify CBP when merchandise is transferred from one conveyance to another, addresses the concerns in this comment.

E. Sealing of Conveyances and Reporting of Seal Numbers

Comment: CBP should clarify or define the term “container” as used in this rule. Does the requirement to seal containers only apply to “containers” as defined by the Customs Convention on Containers or does it include all road (trucks and truck trailers) and rail (rail cars and truck trailers on rail cars) conveyances?

CBP Response: The § 18.4 seal requirements apply to containers that can be sealed. This includes truck and rail conveyances. For further information about what are considered containers for CBP purposes see part 115 of the CBP regulations governing containers. The seal requirements for air cargo are specified in § 122.92 and are discussed in section G below.

Comment: The seal and container numbers should not be mandatory data elements. CBP would have the ability to verify the application of seals prior to movement and upon arrival. Seal numbers are not always available at the time of the in-bond transmission, especially if the in-bond request is made by an authorized party other than the carrier that loads the cargo. Providing the seal and container number with the in-bond request will only add minimum assurance that the goods have been properly controlled. Most carrier manifest systems currently do not capture the seal or container number. However, they do have elaborate scanning systems to track the progress of packages as they are sorted and loaded during transportation and movement, which allows for quick identification and location of a shipment in the event CBP chooses to inspect an in-bond shipment at any point in the supply chain. A provision to add the seal number after the initial in-bond request is made should be included.

CBP Response: CBP does not agree that the seal and container numbers should be optional information. Requiring carriers to provide the seal number and container number as part of the in-bond application facilitates CBP’s ability to ensure the safety and security of in-bond merchandise. To address the issue of carriers not knowing seal numbers at the time the in-bond application is filed, CBP is changing

proposed § 18.1(d)(1)(v) to provide that “[i]f, at the time of the filing of the in-bond application, the seal number is not known, the in-bond application must be updated with the seal number within two business days of the date the bonded carrier obtains a seal number. CBP is also changing proposed § 18.4(c) so that in the event that it becomes necessary to remove and replace seals from a conveyance, compartment, or container containing bonded merchandise, updated seal numbers must be transmitted to CBP. The requirements to keep in-bond merchandise sealed, and to re-seal unsealed merchandise, throughout the in-bond movement remains, and the party whose bond is obligated will be liable for liquidated damages for any loss, theft, or irregular delivery.

Comment: CBP should clarify that the container and seal numbers do not need to be filed as part of the in-bond application because they have already been reported to CBP as part of the advance electronic manifest.

CBP Response: The container and seal number information on the advance manifest will be automatically associated with the in-bond application. Therefore, if the container and seal number have already been provided on the advance manifest, the filer of the in-bond application will not have to resubmit the container and seal number as part of the in-bond application.

Comment: Proposed § 18.3(d)(1) specifically permits the breaking of CBP seals in emergency situations. CBP should specify that any responsible agent of the carrier may remove and replace seals at any time for any good reason. The requirement in proposed §§ 18.3(d) and 18.4(c) to obtain CBP permission to break and replace a seal, and to update the in-bond record would place a significant burden on the carrier.

CBP Response: To address this comment and for clarity, CBP is making the following changes to the proposed sections regarding seals. First, CBP is moving some language about seal removal from proposed § 18.3 and is addressing the circumstances for removing seals in § 18.4. Proposed § 18.3(d)(1), which covers the transfer (transshipment) of in-bond merchandise from one conveyance to another, allows for the breaking of seals in case of an emergency or for some other reason. CBP has concluded that the rules about when seals can be removed would fit better within § 18.4 which applies to the sealing of conveyances.

Second, CBP is changing proposed § 18.4 in the final rule to make it less restrictive. CBP agrees that a responsible agent of the carrier should be able to

remove and replace seals for good reason and not just in emergencies. In response to concerns that the requirement to obtain CBP permission to break and replace a seal and to update the in-bond record with the new seal information would place a significant burden on in-bond carriers and to facilitate processing of in-bond shipments, CBP is removing these requirements and allowing a responsible agent of the carrier to remove the seals and reseal the merchandise. Specifically, CBP is changing proposed § 18.4 in the final rule to provide that seals may be removed for the purpose of transferring in-bond merchandise to another conveyance, compartment or container, or to gain access to the shipment because of casualty or for other good reason, such as when required by law enforcement or another government agency.

Comment: C-TPAT partners should be exempt from the requirement to provide seal numbers. Encouraging carriers to join programs such as C-TPAT will offer the additional assurance and controls CBP expects.

CBP Response: CBP disagrees. Compliance with the in-bond regulations, including those pertaining to the sealing requirements, complements supply chain security and efficiency procedures being implemented by C-TPAT partners. However, C-TPAT membership will continue to be a relevant factor for targeting purposes.

Comment: Proposed § 18.4(b)(1) states that merchandise that is not covered by a bond may only be transported in a sealed conveyance or compartment that contains bonded merchandise if the merchandise is destined for the same or subsequent port as the bonded merchandise. CBP should recognize that less than carload or container load (LTL) in-bond shipments may move in conveyances, commingled with non-bonded merchandise, that are not sealed. This is a normal operating practice in domestic truck operations where numerous shipments are commingled on trailers and transferred, sometimes multiple times, during the life cycle of the shipment. CBP should allow flexibility for this requirement for LTL carriers, allowing them to commingle freight.

CBP Response: CBP agrees that the proposed limitations on transporting in-bond merchandise with non-bonded merchandise could hamper the transportation of in-bond merchandise, especially for LTL shipments. Accordingly, CBP is changing the sealing requirements in proposed § 18.4 by adding new paragraph (b)(2) allowing

for the transportation of in-bond merchandise with non-bonded merchandise in a container or compartment that is not sealed, if the in-bond merchandise is corded and sealed, or labeled as in-bond merchandise. This will allow in-bond merchandise to be transported with non-bonded merchandise in a container that is not sealed and will facilitate the use of less than container load shipments.

Comment: How would a filer/carrier apply for the waiver of seal requirements as mentioned in proposed § 18.4(a)(2)?

CBP Response: A request for a waiver of the sealing requirement can be submitted by indicating that there is “no seal” when filing the in-bond application. If CBP has concerns regarding the lack of a seal, CBP may require additional information or reject the in-bond application.

Comment: The regulatory text regarding the removal and breaking of seals should be changed so that seals must remain intact at all times except for transfer operations covered under §§ 18.3(b), 18.3(c), 18.3(d) and bonded warehouse operations covered under § 19.6(e), in which case the breaking and affixing of new seals by the responsible party per 18.1(c) is authorized. Failure to keep the seals intact and/or remove the seals without CBP permission should result in the assessment of liquidated damages. This will act as a deterrent to theft and substitution. Furthermore, the unauthorized breaking of seal acts as a notification to the bonded carrier that something may be amiss.

CBP Response: The proposed suggestions regarding the removal and breaking of seals is too restrictive and is not necessary for security purposes. The requirements in § 18.4 of this rule adequately address these security issues without impeding the movement of the goods. By allowing for the removal of seals and requiring that new seals be affixed by a responsible agent of the carrier, CBP is providing flexibility so that the transport of the in-bond merchandise can be completed while still maintaining the integrity of the shipment.

Comment: CBP should change the requirements in proposed § 18.3 so that CBP authorization is not required in order to remove seals in order to transfer in-bond merchandise from one conveyance to another.

CBP Response: With the change that CBP is making to proposed § 18.3, *i.e.*, removing the requirement to notify CBP when merchandise is transferred from one conveyance to another, the concerns in this comment have been addressed.

Comment: How will CBP handle trucks that are stopped for a potential road violation where the driver is required to open the truck by the highway patrol or other governmental agency resulting in the seal that was used for the movement of in-bond merchandise being broken?

CBP Response: CBP is changing proposed § 18.4(c) in the final rule to allow for the removal of seals for good reason and, as discussed in a prior response, require new seals to be affixed by a responsible agent of the carrier. Accordingly, if the responsible agent of a carrier, *e.g.*, the driver, is required to open a sealed container by local law enforcement or other governmental agency, the agent can replace the broken seal with a new seal.

Comment: As unforeseen circumstances not contemplated by proposed § 18.3(d) could arise, we suggest that the language be updated to read “removal of seals without CBP permission may result in the assessment of liquidated damages.”

CBP Response: As discussed in a prior response, CBP permission will not be needed to remove seals. However, the party whose bond is obligated will be liable for liquidated damages for any loss, theft, or irregular delivery of the in-bond merchandise.

Comment: Proposed § 18.4(a)(1) states, “The seals to be used and the method for sealing conveyances, compartments, or packages must meet the requirements of §§ 24.13 and 24.13a of this chapter [19 CFR].” Can CBP confirm that containerized ocean cargo shipments being transported in-bond that are secured with a high security seal meeting applicable ISO standards meet the requirements of these sections?

CBP Response: The proposed regulations do not change any of the existing requirements regarding how containers are sealed and what types of seals are to be used. Containerized ocean cargo shipments being transported in-bond may be secured with a high security seal meeting applicable ISO standards, which meets CBP’s requirements to seal containers transporting in-bond merchandise.

Comment: CBP should require that trailers be sealed with ISO compliant high security seals when goods are being shipped in-transit through the United States or Canada.

CBP Response: Proposed § 18.4 requires that in-bond merchandise be sealed in accordance with CBP regulations, specifically §§ 24.13 and 24.13a. However, it should be noted that C-TPAT members are required to use International Organization for Standardization (ISO) compliant seals

by virtue of their participation in C-TPAT. As a result, many in-bond carriers use ISO compliant seals.

F. Air Cargo

Comment: CBP needs to clarify the scope of this NPRM, which is confusing in respect to existing CBP air commerce regulations. It is not clear if air carriers would be subject to the new process supplemented by any specific provisions in part 122 (air commerce regulations), or if air carriers would not be affected and would be able to simply continue handling in bonds under only the provisions of part 122.

CBP Response: The existing air commerce regulations in part 122 will continue to govern the movement of in-bond shipments by air, except for the maximum in-transit time. Under the existing regulations, the maximum in-transit time for air cargo transported in-bond is 15 days. Under proposed §§ 122.119 and 122.120 the maximum in-transit time for air cargo transported to another U.S. port is increased to 30 days. Proposed § 18.0 (Scope; definitions), provides that except as provided in parts 122 and 123, part 18 sets forth the requirements and procedures pertaining to the transportation of merchandise in-bond. Parts 122 (Air Commerce) and 123 (Customs Relations with Canada and Mexico) govern the rules and procedures for the transportation of in-bond merchandise, respectively, in the air environment and in-transit merchandise traveling through the United States, Canada or Mexico by truck and train. The provisions of part 18 are applicable to the in-bond procedures not specifically addressed in parts 122 and 123. For example, proposed § 18.8 governing the liability of in-bond carriers is applicable to all in-bond movements, regardless of the mode of transportation. Conversely, the provision of proposed § 18.4(a)(1) requiring the sealing of containers does not apply to in-bond merchandise traveling by air, because § 122.92(f) specifically provides that the sealing of aircraft, aircraft compartments carrying bonded merchandise, or the cording and sealing of bonded packages carried by the aircraft, is not required.

Comment: With regard to the in-bond application process, air carriers are aware that ACE provides additional functionality to allow better visibility to and control of who obligates a carrier’s bond. With the elimination of the 7512 paper form, air carriers will have no visibility to or ability to control who is obligating their bonds. Until such time as air is fully transitioned into ACE, CBP must provide air carriers with the

capability to view electronic in-bonds opened on their behalf and control who has the ability to obligate their bonds. One suggestion is to provide air carriers with the ability to open an ACE account to allow them the same access to in-bond reports and control tools that are available to ocean and rail carriers.

CBP Response: When the notice of proposed rulemaking was issued, the functionality for filing electronic air in-bond applications for air shipments in ACE did not exist. However, this functionality was delivered through Air ACE (M2.1) on June 7, 2015. Currently, Air ACE permits an air carrier to view in-bond reports to see who is obligating its bonds. Although CBP intends to fully automate the in-bond process, including in-bond movements by air, changes to the regulations pertaining to in-bond movements by air will be handled under a separate rulemaking. Until such time, the 7512 paper form may still be used in the air environment.

Comment: The proposed changes will force bonded carriers to operate in multiple CBP-approved electronic systems (ACE, Air AMS, and ABI QP/WP) when the mode of transportation changes as shipments are transported. This is a problem for express carriers that currently use Air AMS to process in-bond shipments. For example, it is common to have transit shipments arrive into the United States via truck and the electronic in-bond request submitted at the land border via ACE. The shipment subsequently departs the United States via air. CBP should provide status messages between ACE and Air AMS, allowing for the electronic arrival and exportation of these bonded shipments via AMS for the proper closure in CBP systems. Without this electronic interface, the bonded carrier would have no choice but to provide paper in-bonds to CBP for proper exportation. If CBP does not provide status updates between EDI systems, the bonded entity will have a tremendous administrative burden to track all in-bond shipments opened in ACE, which would require “manual” posting in ACE (arrival/exportation). This issue is further compounded when transportation services are shared between multiple business units within the same entity.

CBP Response: CBP tracks the in-bond merchandise based on the mode in which the in-bond application was filed, regardless of what other modes of transportation are used to transport the in-bond merchandise. Accordingly, if the in-bond movement starts out in air, it remains an air in-bond entry for tracking purposes until the in-bond merchandise arrives at the destination

port, port of exportation, or the in-bond is closed and a new in-bond is initiated in another mode of transportation. The movement will be tracked according to the new mode of transportation when a new in-bond number is created as the result of a new in-bond application.

CBP has established multi-modal electronic procedures within ABI (QP/WP) that will allow any authorized party to file an in-bond application electronically regardless of the mode of transportation. QP is used to initiate the in-bond application and WP is used to arrive/export the in-bond shipment. As of June 7, 2015, QP/WP can be used for all in-bond transactions, regardless of mode. This provides tracking of in-bond transactions between various modes and tracking history within ACE.

Comment: Air carriers request that CBP clearly define the requirements and procedures for intermodal in-bond transfers prior to any implementation of this rule. Currently, other transport modes provide a CBP Form 7512 with shipments that are moving to an air carrier, and the air carrier delivers the CBP Form 7512 to CBP at the port of exportation or destination to close the in-bond. The air carrier regulations at §§ 122.92 and 122.93 specifically state that form 7512 or “other Customs approved document” shall be delivered to the carrier at the in-bond origin, and the carrier shall deliver that to the port director at the in-bond destination port. What will be the process for reconciling “intermodal-to-air” in-bonds in the absence of a 7512 paper form?

CBP Response: QP/WP now can be used for all in-bond transactions, regardless of mode, and provides tracking of in-bond transactions between various modes and tracking history within ACE. Whether the initial in-bond is filed in ocean, rail, truck or air, the in-bond movement will be tracked by CBP in the mode in which it was opened. In such case, the in-bond can be closed with an electronic filing upon arrival at the destination port.

Comment: Air carriers utilize “unit load devices” (ULDs) which are totally dissimilar in structural integrity from an ocean container. Aircraft also have multiple areas used for transport of cargo, whether loaded in ULDs or loose. Does CBP consider ULDs and these areas “compartments” that might be subject to sealing under the proposed rule?

CBP Response: The sealing and labeling requirements for in-bond merchandise transported by air are specified in §§ 122.92(f) and 122.92(g), respectively. Section 122.92(f) does not require the sealing of aircraft compartments carrying in-bond

merchandise, or the cording and sealing of bonded packages. However, § 122.92(g) requires bonded packages to be affixed with the label provided for in proposed § 18.4(b)(3). Therefore, pursuant to § 122.92(f), ULDs used in aircraft do not have to be sealed. However, in-bond merchandise inside of ULDs must be labeled pursuant to § 122.92(g), which requires the affixing of labels as provided for in proposed § 18.4(b)(3).

Comment: Do the timeframes for notifying CBP of arrival contained in proposed §§ 18.1(j) (Report of Arrival), 18.7(a)(1) (Lading for Exportation, Notice), and 18.20(c) (Entry Procedures), apply to air cargo moving in-bond via truck to the port of destination, since there are no arrival timelines provided in § 122.93?

CBP Response: If the movement is an air in-bond movement initiated under part 122, the notice of arrival procedures contained in § 122.93 are applicable. As of June 7, 2015, air carriers can submit the notice of arrival electronically in ACE.

Comment: Considering the existence of § 122.94 which places no restrictions on divided shipments, what is the exact application of the proposed § 18.24(b) language to air with regard to the submission of new in-bond applications and time limits for initiation of divided shipment movements?

CBP Response: Proposed § 18.24(b) does not apply to air shipments of in-bond merchandise. Sections 122.93 and 122.94 specify the procedures for exporting air in-bond merchandise, including the handling of divided shipments at the port of exportation for in-bond merchandise transported by air.

Comment: CBP should revise existing § 122.92 which allows for three copies of an air waybill for T&E, because CBP has indicated that the core intent is to automate the in-bond process.

CBP Response: Although CBP intends to fully automate the in-bond process, including in-bond movements by air, changes to the regulations pertaining to in-bond movements by air will be handled under a separate rulemaking. Until that rulemaking process is completed, § 122.92 applies to in-bond movements by air.

G. Liability of the Parties

Comment: The transfer of bond liability is currently based on signed paper documents, but it is unclear in a completely automated environment what “electronic” event triggers the transfer of liability and the obligation of a different bond.

CBP Response: The transfer of liability to a new bonded party will be

accomplished by the filing and acceptance of a new in-bond application for the merchandise to be transported in-bond. CBP is changing proposed § 18.3 in the final rule to make this clear.

Comment: Throughout the proposed regulations there are references to “the bonded carrier” but it is often unclear which bonded carrier has the liability for the cargo. As there may be more than one bonded entity involved in an in-bond movement (e.g., arriving carrier, delivering carrier, export carrier, FTZ operator), a clear understanding is required of the events and evidence that would shift legal liability from one bonded party to another, particularly in an electronic environment.

CBP Response: For further clarification, CBP is adding a definition to proposed § 18.0(b) for “bonded carrier.” This term is defined as the carrier whose bond is obligated for the in-bond movement of the merchandise as shown in the in-bond record. This party is liable for failure to meet the requirements of Part 18, Part 122 or Part 123 (as applicable) or any of the other conditions specified in the bond. CBP is also changing proposed § 18.3 in the final rule to clarify that in order to transfer liability from one carrier to another, a report of arrival must be filed for the in-bond merchandise and the subsequent carrier must submit a new in-bond application pursuant to § 18.1.

Comment: Holding the bonded carrier liable for liquidated damages for failing to comply with any of the requirements found at Part 18 or any of the conditions specified in the bond is too broad. This affords CBP a general license to impose liquidated damages against bonded carriers for even minor and technical infractions such as unintended data transmission errors. CBP should assess liquidated damages only for egregious violations and other violations specifically listed, such as for irregular delivery.

CBP Response: Liquidated damages are assessed when the conditions of the bond are violated. One of the conditions is to comply with CBP regulations relating to the handling of bonded merchandise. See § 113.63(b)(3). CBP primarily ensures compliance with in-bond requirements, including those that the commenters have categorized as “minor and technical infractions,” through the assessment of liquidated damages. CBP disagrees that it should take action only with respect to egregious violations. The obligations established by regulation regarding the processing of in-bond entries and safekeeping of in-bond merchandise are necessary requirements. A breach of any

of the obligations may result in the assessment of liquidated damages. The decision to assess any claim is one of administrative discretion, so CBP may always refrain from issuing a claim if deemed advisable. CBP may also choose to cancel liquidated damages claims upon payment of a lesser amount pursuant to 19 U.S.C. 1623(c) and has published guidelines when CBP deems that such action is appropriate.

Comment: The bonded carrier should not be held liable for the submission of data elements for which it has no true knowledge of their accuracy.

CBP Response: The carrier whose bond is obligated is responsible for the information submitted in conjunction with the in-bond application and subsequent updates to the in-bond record and is subject to the assessment of liquidated damages for not complying with the terms of the bond, which includes adherence to the in-bond regulations. However, when issuing claims and considering their mitigation, CBP will consider whether a party reasonably relied on information submitted to it from a third party.

Comment: The language in proposed § 18.2 should be revised so that when merchandise is delivered to a bonded common carrier, contract carrier, freight forwarder or private carrier, the merchandise may be transported with the use of facilities of other bonded or non-bonded carriers; however, the responsibility for the merchandise will remain with the common carrier, contract carrier, freight forwarder or private carrier whose bond is obligated.

CBP Response: Under proposed § 18.2, merchandise may be transported with the use of facilities of other bonded or non-bonded carriers. However, the responsibility for transporting in-bond merchandise will remain with the party whose bond is obligated.

H. Export of Merchandise

1. Reporting Arrival at Port of Exportation

Comment: The proposed changes to the in-bond process mandate that the delivering carrier report, via a CBP-approved EDI system, the arrival of any portion of an in-bond shipment within 24 hours of arrival at the port of exportation. This represents a substantial change from the current regulations. Currently, the carrier has “2 working days after arrival” to report. The reduction to 24 hours places a substantial new reporting burden on the carrier, zone operators, and other parties, that will require additional staff to work weekends and holidays. The

proposed 24-hour requirement should be changed to two business days.

CBP Response: CBP agrees. As discussed in Section I.B.2. above, CBP is changing proposed § 18.20 to require the report of arrival be filed within two business days after arrival. In addition, CBP is moving the provision setting forth this time limit from § 18.20(c) to § 18.20(g), as it fits better in the context of paragraph (g).

Comment: How will CBP respond to system down time if ACE is not available to report the arrival of the in-bond merchandise within 24 hours?

CBP Response: CBP is changing proposed §§ 18.1(j), 18.7(a)(1), and 18.20 to provide that the notice of arrival must be submitted within two business days after arrival. This should generally provide adequate time in the event of a system outage. In case there is an outage that prevents compliance with the notice requirements, carriers will need to contact the port at which the in-bond merchandise has arrived for instructions on how to submit the required information. Each outage presents unique circumstances that will be dealt with on a case-by-case basis according to the port’s instructions.

Comment: Proposed §§ 18.7(a)(3), 18.20(g), 18.25(f) and 18.26(e) require the bonded carrier to update the in-bond record when the in-bond merchandise is exported. The proposed language is unclear as to which bonded carrier must complete this notification. Because there can be multiple bonded carriers involved in the transport of merchandise for a single shipment, CBP should clarify the language regarding the specific bonded carrier that is responsible for this notification.

CBP Response: After further consideration, CBP is of the view that for consistency, any of the parties who can amend the in-bond record as described in proposed § 18.1(h) should be able to update the in-bond record to reflect that the merchandise has been exported. These parties include the filer of the in-bond application or any other party identified in § 18.1(c). Therefore, CBP is changing proposed §§ 18.7(a)(3), 18.20(g), 18.25(f) and 18.26(e) in the final rule to remove the requirement that the bonded carrier must update the record and to simply provide that the in-bond record must be updated by any of the parties identified in 18.1(c) or their agent. However, the party whose bond is obligated is the party that is responsible for ensuring the in-bond record is up to date.

2. Proof of Exportation

Comment: For consistency, CBP should provide a detailed list of all

acceptable forms of proof of exportation. The current CBP practice on the southern border with Mexico is to require a supervised export and for CBP to provide the driver with a perforated copy of the CBP Form 7512. This document serves as the proof of exportation. Will CBP create a new form that can serve as proof of export?

CBP Response: Section 113.55 covers the procedures for cancelling export bonds and lists the documents that may be used as proof of export for such purpose. These documents would also be acceptable proof that in-bond merchandise has been exported. The documents, or their electronic equivalent, included in § 113.55 are the listing of the merchandise on the outward manifest or outward bill of lading, the inspector's certificate of lading, the record of clearance of the vessel or of the departure of the vehicle, and a foreign landing certificate if the certificate is required by the port director. CBP will not create a new form of the perforated CBP Form 7512. These paper documents would be used in an audit scenario to demonstrate exportation of the in-bond merchandise.

Comment: Proposed §§ 18.7(a)(3), 18.20(g), 18.25(f) and 18.26(e) provide that the principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation. However, the language is unclear as to which bond is obligated especially when there are multiple carriers. Clarification as to which principal is required to complete this notification, especially in the circumstance of multiple carriers for a single in-bond move, should be provided.

CBP Response: The requirement to provide proof of exportation at the request of the port director resides with the party whose bond was obligated to complete the in-bond transaction.

Comment: CBP should clarify the meaning and intent of proposed § 18.26(c) (Transfer at selected port of exportation). It specifies that if in-bond merchandise is to be transferred to another conveyance after it has arrived at the port of exportation, the procedures prescribed in proposed § 18.3(d) will be followed. However, proposed § 18.3(d) pertains to the "Transshipment of merchandise in emergency situations." The transfer to another conveyance under normal course of business is not an "emergency situation."

CBP Response: For clarity, CBP is moving the provision covering the removal of seals from proposed § 18.3(d) (transshipment of merchandise in emergency situations) to § 18.4(c)

(removal and replacement of seals). The language in proposed § 18.26(c) is being changed accordingly to reference the procedures for the removal of seals in § 18.4(c) in this final rule. Regarding the concerns of the commenter, the placement of the procedures for the removal of seals under its new heading in § 18.4(c) makes clear that the procedures do not merely apply in an "emergency situation."

Comment: Proposed § 18.23 provides that T&Es may be entered for consumption, warehouse, FTZ or any other form of entry, and are subject to all the conditions pertaining to merchandise entered at a port of first arrival. The options provided are viable for in-bond shipments, whether or not there is a change of foreign destination or change of entry. Therefore, this language should apply to all types of entries, not just T&Es and should be included in proposed § 18.20 (General Rules), rather than in § 18.23 regarding change of foreign destination.

CBP Response: Although the commenter's suggestion has some merit, for consistency and clarity CBP has tried to mirror the format of the existing regulations when possible and to include substantive provisions under detailed headings. In this case, the current regulation that addresses the change of entry for T&Es is § 18.23 (Change of destination; change of entry) and the current regulation that addresses the change of entry for ITs is § 18.12 (Entry at port of destination). We are amending § 18.12(a) to specifically state that merchandise received under an immediate transportation entry at the port of destination may be entered for consumption, transportation and exportation, immediate exportation, or for immediate transportation, or under an FTZ admission. Current § 18.23 also specifies what happens when T&E merchandise is subject on importation to quarantine or other restrictions. The proposed regulations maintain this same format and headings. The statement that T&Es are subject to all the conditions pertaining to merchandise entered at a port of first arrival is intended to incorporate and expand on the concept in the current regulation about merchandise that is subject on importation to quarantine or other restrictions.

I. Diversion of Merchandise

Comment: Proposed § 18.5(a) requires the party that submitted the in-bond application to submit a request to divert merchandise via a CBP-approved EDI system. It further provides that authorization for the diversion and movement of merchandise will be

transmitted via a CBP-approved EDI system. Approval should be automatic. When the diversion request is denied, CBP should provide a detailed reason for the denial within 24 hours of the denial notification.

CBP Response: CBP will notify the filer of the approval immediately by the updating of the port code in the in-bond record. If the update of the port code is rejected, that will constitute the denial of the diversion request. The in-bond record will be updated quickly upon the denial of the diversion request. Although the filer will not be notified of the reason for the denial, the filer may contact the port for such information.

Comment: If a diversion is prohibited, for example, by law or for a specific control of a commodity or shipment, this could be noted systemically by CBP at the time of original processing and approval of the in-bond application. A statement such as "Diversion Not Authorized" could be added to the in-bond record for simple reference by CBP and the in-bond carrier.

CBP Response: CBP will take this comment under advisement for future updates to the CBP-approved EDI.

Comment: Express carriers use multiple ports from which to export in-bond shipments from the United States. Packages shipped in-bond may be re-routed and diverted to different ports of exportation several times prior to the actual exportation of the merchandise. As a result, CBP may receive several diversion requests for one in-bond shipment prior to exportation. This could place a substantial burden on the carrier and on CBP's systems. Moreover, due to the large volume and short timeframes involved, it may not be possible to verify the accuracy of the requests until the in-bond shipment is physically exported. Therefore, CBP should accept diversion updates post departure when the data is most accurate. This would minimize the number of diversion messages reported to CBP and increase data accuracy.

CBP Response: CBP is requiring authorization to divert in-bond merchandise because the existing diversion procedures make it challenging for CBP to identify the destination port of a diverted shipment and to determine whether the merchandise reaches that destination. This situation presents a security risk, a risk of circumvention of other agencies' admissibility requirements, and a risk that proper duties will not be collected. Acceptance of post-departure diversion requests would undermine the objectives of the proposed rule. Diversion requests and updates can be submitted at any time and are not

limited in number. If the port of exportation for in-transit shipments changes multiple times, the requests should be submitted for each change as the change occurs.

Comment: The requirement in proposed § 18.5(a) to obtain authorization prior to the diversion of in-bond merchandise will reduce the ability of carriers to arrive merchandise at the destination port or port of exportation within 30 days. This is especially true if the diversion request is denied and the carrier has to re-route the in-bond merchandise.

CBP Response: Approval and denial of diversion requests will be communicated immediately and should not result in delays long enough to impede the completion of the in-bond movement within the required in-transit time. However, an extension of the in-transit time may be requested when necessary.

Comment: In order to provide guidance to the trade community and to help CBP review diversion requests, CBP should establish criteria for granting or denying a diversion request. Some factors CBP should consider are the carrier's associated costs if the diversion request is denied, the time constraints associated with denying diversion requests, and any other constraints associated with the original port of destination or port of exportation.

CBP Response: Although CBP has the discretion to deny a request for diversion, CBP will generally grant a reasonable diversion requests. For example, CBP will deny a request for a diversion when another government agency mandates delivery of the merchandise to the destination identified in the original filing. CBP is revising § 18.5 to incorporate this example.

J. Immediate Transportation

Comment: With respect to the filing of an IT in-bond application, proposed § 18.11(a)(2) requires the importer to stipulate in the in-bond application that within 24 hours after the arrival of any part of the merchandise or baggage to a place outside the port of entry, the importer will file an entry for the shipment and will comply with the provisions of § 151.9 of this chapter, before permission will be granted by CBP to transport the merchandise in-bond. There is concern about having the bonded carrier stipulate that the importer will timely file an entry and comply with other regulations since this is outside of the bonded carrier's control. It is also unclear how a stipulation to file entry is to be included

on the in-bond application upon submission to CBP. In an effort to continue to transition to an electronic environment, if an actual stipulation is required, provisions for including this declaration in the electronic in-bond application should be available.

CBP Response: To address these concerns, CBP is removing § 18.11(a)(2) from the final rule and adding the requirement that the in-bond merchandise be transported to a place outside the port of entry in accordance with the provisions of §§ 151.7 and 151.9 of this Chapter.

K. Divided Shipments and Retention of Goods Within Port Limits

1. Divided Shipments

Comment: Is CBP requiring the bonded carrier to request authorization for a split shipment in advance of the shipment movement? If so, when must the request be submitted? In most cases, the bonded carrier will not be aware of a split movement until the initial conveyance has departed. The split movement will not be known until a portion of the shipment has in fact been exported, departed the port of unloading or has arrived at the destination port.

CBP Response: Proposed § 18.5(c) only covers situations where a carrier diverts an in-bond shipment to more than one port, or where a portion of an in-bond shipment is approved for a consumption or warehouse entry. In such cases, a diversion request is necessary. If granted, a new in-bond application must be submitted for each portion of the original shipment to be transported in-bond. CBP is changing proposed § 18.3 in the final rule regarding transfer to eliminate the requirement to obtain CBP authorization when in-bond merchandise is transported on more than one conveyance, but arrives at the same destination port or port of exportation. Also, for clarity, CBP will use the term "divided shipment" in this final rule instead of "split shipment" to refer to the situation where a carrier diverts an in-bond shipment to more than one port or to a consumption or warehouse entry. CBP used the term "split shipment" in the proposed rule to refer to the division of an in-bond shipment. However, the term "split shipments" refers specifically to the treatment of multiple entries of merchandise as a single transaction pursuant to 19 U.S.C. 1484(j) and 19 CFR 141.57 and 141.58.

Comment: The requirement in proposed § 18.5(c) to initiate a new in-bond for each [divided] shipment will be difficult for express carriers to comply with because of the large

number of in-bond shipments that they move through the United States. CBP should consider allowing the carrier or agent to submit the [divided] shipment information after departure, when the information is most accurate. This process will provide CBP the most accurate up to date export or arrival information which will assist CBP with the electronic reconciliation of the in-bond record.

CBP Response: CBP is requiring the filing of a new in-bond application for in-bond shipments that will be diverted to more than one port to enable CBP to identify in advance the destination of a diverted shipment and to determine whether the merchandise reaches that destination. This procedure will also ensure that other agencies' admissibility requirements are not circumvented and that proper duties are collected. CBP appreciates that this process may impose a burden on express carriers and CBP will seek ways to mitigate this burden.

Comment: CBP should automate the ASN3 (in-bond arrival message set for Air AMS) and ASN7 (in-bond export message set for Air AMS) messages to allow for piece count and export port identifier to properly track the [divided] shipment. This will provide CBP updated movement information, including ports of departure.

CBP Response: CBP has incorporated these automation features in Air ACE, which has replaced Air AMS and is now operational.

Comment: CBP's requirement in proposed § 18.24(b) that all movements of a [divided] shipment be initiated within two days after the [division] has been authorized is not feasible for various reasons. First, the conveyance must be secured and loaded and normal delivery hours and schedules at the port can limit the amount of loading that can be accomplished in a two-day period. Second, in many cases, a bonded carrier may have limited conveyances for specific export destinations or ports. Third, it may be impossible to close a [divided] shipment within two days when multiple modes are utilized (combination of truck and air). Finally, some shipments are more time consuming and require special handling.

CBP Response: CBP agrees that it may not be feasible to initiate movement of divided shipments within two days of the day CBP authorized the divided shipment. CBP is removing this requirement in the final rule.

2. Retention of Goods Within Port Limits

Comment: Proposed § 18.24(a), which allows for the retention of goods within

the port limits for up to 90 days with CBP approval, should be clarified as follows: (1) To indicate that retention as described is at the port of exportation and (2) to specify how the application to retain the goods at the port of exportation for up to 90 days should be made. Is the purpose of requiring the filing of an Immediate Exportation (IE) entry to close the original Transportation and Exportation (T&E) entry to shift liability for the in-bond cargo?

CBP Response: CBP is changing proposed § 18.24(a) in the final rule to clarify that the retention of goods applies to the port of exportation. The application to retain the merchandise at the port of exportation must be made, and approval will be given, via a CBP approved EDI. The purpose of filing an IE is to close out the original T&E. The party whose bond is obligated on the IE will be the party who is responsible for the export of the merchandise. However, the party obligated on the original T&E remains obligated for the shipment unless and until an IE is filed.

M. Potential Impact

Comment: One commenter estimated that the new data, reporting, and monitoring requirements of the proposed rule will increase costs for in-bond carriers in a number of ways. The commenter claims that requiring carriers to report the HTSUS number and changing the requirement from having to file the final foreign destination to having to file the ultimate destination will increase costs by an estimated 5 percent and 1 percent, respectively, and requiring carriers to notify CBP of a change in the final foreign destination will increase costs by an additional 5 percent. The commenter further states that carriers will see significant cost increases due to the shortened transit time, the requirement to request extensions when in-bond cargo cannot reach the ultimate destination within the required time, and the ability of government agencies to shorten, with notice, the required transit time. Lastly, the commenter notes that the requirement to receive authorization to transport and/or divert restricted merchandise from the government agencies responsible for regulating the restricted merchandise will also increase costs significantly.

CBP Response: CBP has taken these cost estimates submitted by the commenter under advisement when finalizing this rule. However, because CBP received comments on the cost impacts of this rule from only one party and this commenter does not provide specific data concerning the nature of

the cost impacts, we are unable to extrapolate the estimates to the entire universe of carriers. CBP believes that the above changes to the in-bond requirements are necessary for the security of the United States, for protection of the revenue and to ensure that merchandise admissibility is not compromised. However, whenever possible, CBP has made changes to lessen the burden and costs to the public in response to various comments. For example, in response to concerns that in-bond shipments transported by barge may not be able to arrive at the destination port or port of exportation within 30 days, CBP changed proposed § 18.1(i)(1) to allow 60 days for the arrival of in-bond merchandise transported by barge. For a full discussion of the costs and benefits of this regulation, see Section IV., Regulatory Analysis.

N. Miscellaneous Items

1. Impact on Inland Ports

Comment: Has CBP taken into consideration the impact the changes this rule will have on inland ports of entry and the clearance process? As shippers examine the impact of the proposed changes on their business and determine that the in-bond process has become too onerous and burdensome, they may look to change their business practices and stop transporting merchandise in-bond. This could impact staffing levels at inland ports that were once needed to process consumption entries for in-bond merchandise.

CBP Response: The new electronic in-bond processing should facilitate the use of in-bond procedures. Although concerns have been raised about some of the requirements contained within the proposal (many of which CBP is addressing by not adopting various proposed provisions in this final rule), CBP has received no other comments indicating that shippers will stop using the in-bond program.

2. Supervision of Rail Shipments

Comment: To maximize space and weight used on a rail car, importers may preload a railcar and provide the carrier the load sheet details. The carrier then transmits the exact load per rail car to CBP. Once the in-bond submission is accepted by CBP the rail car dispatches. Will CBP advise the carrier prior to loading and in-bond transmission if supervision is required?

CBP Response: If supervision is required, CBP will notify the carrier prior to acceptance of the in-bond application.

3. Textiles

Comment: The textile provision in proposed § 18.1(d)(1)(iv) goes far beyond the requirements of a carrier moving commodities from origin to destination, regardless of crossing borders. This provision, which is specific to legislation dating back over 60 years, pertains to admissibility and not transport. More fundamentally, reference to the Agricultural Act of 1954 is in essence reference to quantitative restrictions, *i.e.* quotas, which are now eliminated for textile and apparel items from most origin countries. Consequently, this requirement is applicable for only a small minority of imported textile and apparel items, and therefore unduly burdensome. Moreover, this provision requires information that is not readily available to carriers and in such detail that carriers cannot comply with the provision without the assistance of a customs broker.

CBP Response: The proposed requirements mandating the in-bond filer to provide sufficient detail for certain textile items so that the port director can determine the duties and taxes are in the existing regulations at § 18.11(e), pertaining to IT shipments. These requirements have not posed problems for carriers in the past. The proposed regulations did expand the application of these requirements by making them also applicable to IE and T&E shipments. In order to minimize the burden on the trade and to make it consistent with the existing regulations, CBP is removing this requirement from proposed § 18.1(d)(1)(iv) and moving it to § 18.11(d) so that it is only applicable to IT in-bond shipments as is currently the case.

4. Cartmen

Comment: Proposed § 18.1(d)(3) provides that the in-bond application can be filed at any time prior to the merchandise departing the in-bond origination port. In the past, CBP required authorization for the movement of the cargo from the importing carrier/terminal to the bonded carrier by bonded cartmen within the port limits and, indeed, the CBP Form 7512 document was integral to this process. CBP should clarify (1) whether bonded cartmen will be subject to this new requirement, and (2) CBP's plans and programming changes for bonded cartmen reporting requirements relating to such delivery from the importing to bonded carrier within the origination port limits.

CBP Response: A permit to transfer is still required in order to move the

merchandise from the importing carrier or terminal to the bonded carrier moving the merchandise in-bond. This rule does not change that requirement or the timing of such requirement. CBP is making programming changes to facilitate the reporting requirements for bonded cartmen. Appropriate regulatory changes will be made in the future.

5. Carnets

Comment: CBP should clarify the numerous references to carnets throughout CBP's proposed changes to the in-bond process. This NPRM is not intended to include the ATA (Admission Temporaire—Temporary Admission) and Tecro/AIT² carnet as they are not considered “in-bond” entries. Accordingly, CBP should remove any reference to ATA and Tecro/AIT carnets, as well as any generic references to carnets. At present, the ATA and Tecro/AIT entries are handled by entering the data manually and CBP should work with the trade to ensure that ACE and/or ACS can accommodate the tens of thousands of ATA and Tecro/AIT entries per year.

CBP Response: This rule does not change the regulations as they relate to ATA and Tecro/AIT carnets either substantively or where they are codified.

6. Sharing of Information and Confidentiality

Comment: The proposed rule does not promote or maintain the confidentiality of the shipper's or importer's commercial information. While it is true that entry information transmitted to CBP by a customs broker is exempt from disclosure, it is equally true that manifest information filed by carriers is routinely accessed under the Freedom of Information Act by various commercial enterprises. Unless CBP recognizes in-bond entries as “customs business” and restricts the transmission of this information to licensed customs brokers, it must be anticipated that carriers and transportation intermediaries will seek to streamline their processes and require that this information be included on the existing shipping documentation which their staffs are accustomed to handling. This will further expose shipper's or importer's confidential business information to dissemination within the supply chain without a concurrent trade benefit. CBP needs to develop a

mechanism to keep this sensitive commercial information private or restrict its transmission to those parties who are required by statute to safeguard their client's commercial information, *i.e.*, customs brokers.

CBP Response: The filing of an in-bond application does not constitute customs business requiring a licensed broker and CBP does not believe that CBP needs to mandate the use of customs brokers in order to safeguard sensitive commercial information. CBP has modified the proposed regulations to require less detailed information in the in-bond application (*e.g.*, removing proposed § 18.1(d)(1)(v) requiring other identifying information and removing the requirement to provide the rule, regulation, law, standard or ban relating to health, safety or conservation in proposed § 18.1(d)(1)(ii)). As a result, carriers will not have to include entry information on shipping documentation. Existing protections of confidential business information under § 103.35 would apply to any covered confidential information on the in-bond application. The release of manifest information is covered by § 103.31. It provides the procedures for protecting manifest information from release and allows importers, consignees and shippers to claim confidential treatment for this information.

Comment: Clarification should be provided regarding the utilization of the information required in the in-bond application, as well as CBP's proposed methodology to validate, store, maintain, and disseminate, this information.

CBP Response: The information provided on the in-bond application will be used for targeting and enforcement purposes, to prevent smuggling and fraud, and for security purposes. The information will also be used to track and close the in-bond shipment. For information on the maintenance and dissemination of this information see the following Systems of Records Notices (SORNs). The SORN for ACE is available at: <http://www.gpo.gov/fdsys/pkg/FR-2006-01-19/html/E6-511.htm> and was published in the **Federal Register** on January 19, 2006 (71 FR 3109). ABI is covered by the ACS SORN, which is available at: <http://www.gpo.gov/fdsys/pkg/FR-2008-12-19/html/E8-29801.htm> and was published in the **Federal Register** on December 19, 2008 (73 FR 77759).

Comment: Electronic in-bond filing and tracking of shipments, combined with the additional data CBP will collect on these shipments, will provide an effective and business-friendly means to combat the problem of

fraudulent paperwork to claim NAFTA benefits so long as the in-bond information can be shared with Mexico when the goods are shipped from the United States.

CBP Response: This rule does not affect information sharing with Mexico. CBP will continue its current procedures and policies for sharing information with Mexico pursuant to existing agreements.

7. Definitions

Comment: Terms commonly used in the proposed regulations, such as conveyance, containerized shipments, compartments, carloads, cartman, delivering carrier, lighterman, port cluster, import carrier, export carrier, transshipment and ultimate destination, should be defined to establish uniformity in application and meaning within the regulations.

CBP Response: CBP does not believe it is necessary to define all the terms used in the proposed regulations. CBP has defined the terms which are essential to the proper and uniform application of the in-bond regulations. These include Common carrier, Origination port, Port of destination, Port of diversion, and Port of exportation as set forth in proposed § 18.0, and Bonded carrier, which CBP is adding.

Comment: The proposed regulations define port of destination as the U.S. port at which merchandise is entered after being shipped in-bond from the origination port where it was entered as an immediate transportation entry. We believe the text should be revised to include other possibilities, such as admission to a foreign-trade zone and more than one movement under more than one bond.

CBP Response: CBP agrees that various provisions of the proposed in-bond regulations should apply to goods admitted to a foreign-trade zone and is changing various sections in Part 18 in the final rule (§§ 18.20(e), 18.23(b), and 18.25(b)) to add a reference to admission into a foreign trade zone. In view of these changes, there is no need to revise the definition of “port of destination.” This approach provides CBP with flexibility and allows CBP to accurately describe the requirements and procedures under specific provisions.

8. Restriction of IE by Truck

Comment: Does proposed § 18.25(b) provide the port director with the discretion to allow the filing of the IE entry? If the port director does not have this discretion, this proposal would pose a hardship for some Canadian business located on the Canadian border

² “TECRO/AIT carnet” means the document issued pursuant to the Bilateral Agreement between the Taipei Economic and Cultural Representative Office (TECRO) and the American Institute in Taiwan (AIT) to cover the temporary admission of goods. 19 CFR 114.1(g).

and on importers who participate in maquiladora operations in Mexico.

CBP Response: CBP recognizes that there may be legitimate purposes for the filing of an IE entry and is changing proposed § 18.25(b) to state that trucks “may” be denied a permit to proceed. This will provide the port director with discretion regarding whether to allow this process. The port director will make his or her determination on a case-by-case basis.

9. Express Shipments

Comment: Proposed § 18.22 is confusing. Although the heading refers to “Transfer and express shipment procedures at port of exportation,” paragraph (a) does not appear to cover express shipment procedures. Also, paragraph (a) states that if in-bond merchandise must be transferred to another conveyance, the procedure will be as prescribed in proposed § 18.3(d); however, proposed § 18.3(d) covers the transshipment of merchandise in emergency situations. CBP must define “express shipment” and clarify the meaning and intent of § 18.3.

CBP Response: CBP agrees that these provisions are confusing and is making various changes to address this issue. First, CBP is incorporating the title of § 18.22 in the existing regulations, “[p]rocedures at port of exportation,” and using the term “exportation” instead of “exit.” Second, CBP is changing proposed § 18.3(d) in the final rule by removing the provision for the removal of seals in emergency situations and changing proposed § 18.4(c) to cover the removal of seals in all situations. Concurrent with these changes, CBP is changing proposed § 18.22(a) in the final rule to refer to §§ 18.3 and 18.4(c) for the procedures to be followed when bonded merchandise is transferred to another conveyance. Finally, in order to clarify what is meant by “express carrier,” CBP is changing proposed § 18.22(b) by removing the term “express company” and replacing it with the term “express consignment carrier,” which is defined in § 128.1(a) of the current regulations.

10. Automated Broker Interface (ABI)

Comment: Proposed § 143.1 specifies that upon approval by CBP, any party may participate in ABI for other purposes, including transmission of protests, and applications for FTZ admission (CBP Form 214). We note that the application for a transfer of an in-bond movement, which is currently included, has been omitted from this section. However, our interpretation is that this is the language authorizing the utilization of ABI by any party outside

of the designation of customs broker, importer, or service bureau. CBP should preserve the current language so that it includes the filing of the in-bond application via ABI.

CBP Response: CBP agrees and is changing proposed § 143.1 to include the “filing of an in-bond application” as one of the purposes for which parties may use ABI.

11. Foreign-Trade Zones (FTZs)

Comment: CBP received many comments regarding the processing and handling of FTZ merchandise pursuant to part 146. These comments addressed many substantive issues pertaining to FTZs and the procedures for the admission into and processing of merchandise in FTZs.

CBP Response: CBP only proposed amending part 146 to make conforming changes to the proposed in-bond regulations and not to substantively alter the general procedures that apply for the admission into FTZs and the processing of FTZ merchandise. Specifically, CBP removed the references to the “CBP Form 7512” and replaced it with “in-bond application.” Therefore, comments recommending substantive changes to the CBP regulations on FTZ processing are outside the scope of this rulemaking and will not be addressed.

Comment: It is unclear in the proposed regulations what event triggers the relief or transfer of liability from the bond of the carrier. In a FTZ direct delivery authorized environment, filing of an admission is not required prior to delivery of the goods.

CBP Response: The actual admission of the merchandise into the FTZ satisfies the carrier’s in-bond obligation.

Comment: CBP should preserve the use of the CBP Form 7512 for FTZ admissions until an automated solution can be developed.

CBP Response: The processes for admitting and withdrawing merchandise from FTZs for purposes of filing in-bond movements is fully automated using QP/WP.

Comment: Proposed § 146.67 provides for the transfer of merchandise from a FTZ for exportation. Paragraph (b) states that “each transfer of merchandise to the customs territory for exportation at the port where the zone is located will be made under an entry for immediate exportation filed in an in-bond application pursuant to part 18 . . .” This section should state that only the owner/operator acting for their own account or a licensed customs broker is eligible to file such an entry with CBP.

CBP Response: CBP disagrees. The parties authorized to file the in-bond

application should be the same, regardless of whether the merchandise is in a FTZ.

12. Importer Security Filing (ISF)

Comment: The six-digit HTSUS code is required to be provided, if available, pursuant to proposed § 18.1(d)(1)(i), and is also required to be transmitted to CBP 24 hours prior to lading in order to satisfy importer security filing (ISF) requirements. CBP should eliminate the requirement to re-transmit this data element as part of the in-bond application since it is already resident within CBP’s system.

CBP Response: One of the purposes of the in-bond regulations is to ensure that in-bond merchandise is properly transported in-bond before being entered or exported. The information CBP receives on the ISF is not sufficient for proper tracking and enforcement of in-bond requirements. First, ISF data is required only for merchandise arriving in the United States by vessel and not for merchandise arriving in the United States by rail or truck, which are also covered by this rule. Second, pursuant to § 343(a)(3)(F) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note), CBP can only use ISF data for limited purposes, *i.e.*, for ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting. Accordingly, CBP requires the six-digit HTSUS number as part of the in-bond application.

Comment: CBP should restrict the in-bond information requirements to those additional data elements that are not already required to be submitted as part of the advance manifest. Duplicative transmission of data elements will only add to the cost of importing without yielding any security or commercial benefits.

CBP Response: If the carrier electronically files both the advance manifest information and the in-bond application, the carrier would not need to provide duplicative information. Only those few additional data elements that were not provided with the advance manifest information would need to be submitted to satisfy the in-bond application requirements. Only in the instance where the manifest is filed by the carrier and the broker (or other party) files a QP movement on behalf of the carrier would there be duplicative information. Carriers will not have to file duplicative data elements, if they have already filed advance manifest information.

Comment: CBP should clarify procedures in case of over-carried merchandise (*i.e.*, merchandise that was shipped, but not included on the

manifest or bill of lading) for which no advance manifest and ISF were filed. If over-carried cargo is to be re-exported, will CBP authorize an in-bond without an advance manifest and ISF?

CBP Response: CBP will authorize an in-bond transaction to re-export overcarried merchandise for which no advance manifest and ISF were filed. Before filing the in-bond application, a bill of lading would have to be created in ACE to create the in-bond record. However, any applicable penalties for the overcarried merchandise would apply.

13. Redelivery

Comment: The requirement in proposed § 18.6(c) that CBP must demand return of the merchandise to CBP custody (no later than 30 days after the shortage, delivery, or nondelivery is discovered by CBP) is not realistic. Lean manufacturing and distribution principles incorporated in the mainstream activities for companies in today's just-in-time environment can drive the necessity for immediate response and action for merchandise being received at facilities daily. Often merchandise received at facilities before noon is introduced into manufacturing processes or distribution activities before close of business on the same day. This rapid movement and processing of cargo results in the inability to redeliver cargo, intact or otherwise, within 30 days from date of mailing, date of delivery, or demand for redelivery by CBP.

CBP Response: The proposed rule is consistent with existing requirements regarding the redelivery of merchandise in § 113.63(d) and current § 18.6(b). The 30-day timeframe for CBP to demand redelivery is necessary in order to allow CBP to verify the violation leading to the demand for redelivery and to allow sufficient time to process the demand for redelivery. CBP is aware that merchandise may enter the stream of commerce and will strive to process demands for redelivery as quickly as possible.

Comment: CBP should accept proof of the final disposition of the in-bond entry as full satisfaction of a demand for redelivery when a redelivery is requested after the in-bond transaction has completed. For example, if merchandise was exported prior to a demand for redelivery, then proof of export should satisfy the demand for redelivery without any penalty or liquidated damages for failure to redeliver. Similarly, if merchandise is entered for consumption prior to the request for redelivery then the consumption entry should satisfy the

demand for redelivery without any penalty or liquidated damages for failure to redeliver. The bonded carrier is still responsible for the initial violation of the irregular delivery and liquidated damages is the appropriate way to penalize the bonded carrier instead of requiring redelivery of merchandise that has already been exported. In addition, language should be included allowing the acceptance of a foreign-trade zone admission for the full manifested quantity, unless a lesser amount is reported. Admission and validation by a FTZ Operator should satisfy the demand for redelivery of merchandise for shipments in which a shortage has been noted.

CBP Response: The fact that merchandise was exported or entered for consumption prior to receipt of a demand for redelivery does not necessarily mean that liquidated damages are inappropriate. CBP considers whether the information provided satisfies a demand for redelivery and whether the assessment of liquidated damages is appropriate taking into account the facts and circumstance of each individual case.

Comment: Will the redelivery be limited to the quantity of a shortage, *i.e.*, the quantity not delivered, or will CBP have the authority to demand redelivery of all merchandise covered under that in-bond entry? The demand for redelivery should be limited to the merchandise involved in the violation. Once the merchandise is exported, the bonded carrier will have little, if any, ability to ensure that the merchandise is redelivered.

CBP Response: CBP has authority to demand redelivery of all the merchandise covered by an in-bond entry. However, CBP will determine which merchandise to include in a demand for redelivery on a case-by-case basis, taking into account the factors warranting the demand.

Comment: In case of a shortage, will the importer or broker be able to add the in-bond number covering the short shipped pieces to the same CBP Form 3461 or will a new entry have to be filed?

CBP Response: The importer/broker can note the change on the CBP Form 3461 (Entry/Immediate Delivery) or the CBP Form 7501 (Entry Summary), or via a post summary correction if the entry summary has already been filed.

Comment: It is not clear what CBP means by a "short shipment" in proposed § 18.6(a). Does it mean that a portion of the shipment covered by the original in-bond application did not arrive with the rest of the shipment? If so, short shipments would occur for

routine multiple container in-bond shipments that cannot be shipped on a single truck or rail car.

CBP Response: A short shipment means that a portion of the shipment covered by the in-bond application did not arrive at the port of destination or port of exportation. If the merchandise is transported in multiple conveyances, then the shipment can arrive at separate times without resulting in a short shipment. Typically, a short shipment would occur when a portion of an in-bond movement fails to arrive at the in-bond destination within the in-transit period.

14. Pipelines

Comment: Currently many in-bond pipeline movements are filed via the QP/WP electronic filing system. Will electronic reporting for pipelines still be allowed? Will the weekly in-bond processes that are currently utilized for pipeline in-bond still be allowed under the new rules? Do the various compliance requirements contained in the NPRM as part of the move to electronic processing of in-bond movements apply to pipeline movements even though in-bond applications for pipeline shipments are not required to be submitted electronically?

CBP Response: The amendments to the in-bond regulations will not affect the current procedures for in-bond shipments moving via pipeline. Nothing in this rule changes the current procedures and systems that are utilized for in-bond pipeline movements. For example, the in-transit time limits in this rule do not apply to in-bond pipeline movements; CBP is adding a sentence to proposed § 18.1(i)(1) to clarify this. Although the requirements that are related to the electronic filing of an in-bond application do not apply to pipeline movement, carriers can choose to submit electronic in-bond applications and subsequent updates for pipeline in-bond movements using QP.

III. Adoption of Proposal

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, CBP has concluded that the proposed regulations with the modifications discussed above should be adopted as a final rule.

IV. Regulatory Analyses

A. Executive Order 12866—Regulatory Planning and Review

Executive Order 12866 (Regulatory Planning and Review; September 30, 1993) requires Federal agencies to

conduct economic analyses of significant regulatory actions as a means to improve regulatory decision-making. Significant regulatory actions include those that may “(1) [h]ave an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) [c]reate a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) [m]aterially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) [r]aise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.” It has been determined that this rule is not a significant regulatory action.

B. Regulatory Flexibility Act

Under the requirements of the Regulatory Flexibility Act of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (RFA/SBREFA) and EO 13272,

titled “Proper Consideration of Small Entities in Agency Rulemaking,” agencies must consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. CBP is required to prepare a regulatory flexibility analysis and take other steps to assist small entities, unless the Agency certifies that a rule will not have a “significant economic impact on a substantial number of small entities.”³ The U.S. Small Business Administration (SBA) provides guidelines on the analytical process to assess the impact of a particular rulemaking.⁴ The following summary presents the impact of this rule on small entities.⁵

The types of entities subject to the rule’s requirements include originating or bonded carriers, brokers, and other supply chain entities (e.g., exporters, manufacturers and suppliers, cargo consolidators, freight forwarders, third-party logistics providers, (3PLs), and container freight stations (CFSs)) involved in the transaction filing, conveyance, and arrivals reporting of in-bond goods. When finalizing a rule, if CBP is still unable to certify that a rule will not have a significant impact on a

substantial number of small entities, after conducting an initial screening analysis and an Initial Regulatory Flexibility Analysis (IRFA), CBP is required to conduct a Final Regulatory Flexibility Analysis (FRFA).

Based on FY2007 in-bond shipment data, we estimate at least 6,230 trade entities could be affected by the rule, including 5,081 non-air carriers (sea vessel, rail, and truck carriers), between 212 and 221 air carriers, and possibly at least 870 other entities (e.g., freight forwarders, cargo consolidators, 3PLs, brokers, and CFS). The specific requirements of the rule (file in-bond transactions electronically, report in-bond arrivals electronically, provide additional data elements, request diversions, and meet allowable in-bond transit times) will affect all of these entities in some way. CBP lacks the data necessary to quantify the incremental cost of the rule or differentiate these costs by entity type, including size and nationality (many of the entities affected are likely foreign). Instead, we discuss these costs qualitatively. The following exhibit lists various alternatives CBP considered in developing this rule and characterizes their costs.

EXHIBIT 1—RELATIVE COSTS OF REGULATORY ALTERNATIVES

Regulatory alternative	Requirements	Relative cost
1 (Chosen alternative)	All of these five requirements are implemented: <ol style="list-style-type: none"> 1. File all in-bond application forms electronically. 2. Additional in-bond shipment data and information required. 3. Maximum in-bond transit time of 30 days. 4. Request and receive permission electronically prior to diverting in-bond cargo. 5. Report in-bond arrivals and arrival locations electronically. 	Highest: Reason for high cost: Entities filing in-bond forms and/or reporting in-bond arrivals by paper only (582 non-air carriers plus an unknown number of other filers) would have to obtain electronic access to CBP or retain a third party agent or service provider. All entities (5,081 non-air carriers plus an unknown number of other filers) would have to obtain and provide additional in-bond shipment data to CBP by reprogramming their existing business and information systems and processes, using a third-party service provider, or relying on their trade partners. Those entities reporting arrivals (4,388 non-air carriers plus an unknown number of other filers) would have to reprogram their existing business and information systems and processes or use a third party service provider to electronically report arrival locations.
2	Only the following four requirements are implemented: <ol style="list-style-type: none"> 1. File all in-bond application forms electronically. 2. Maximum in-bond transit time of 30 days. 3. Request and receive permission electronically prior to diverting in-bond cargo. 4. Report in-bond arrivals and arrival locations electronically. 	Lower: Costs are lower than Alternative #1 because the costs associated with obtaining and providing the additional in-bond shipment data and information would not be incurred, which could be significant for the most frequent filers. However, overall costs could still be significant to comply with the requirement of reporting arrival locations.

³Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 601 *et seq.*

⁴U.S. SBA, Office of Advocacy, “A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, Implementing the President’s Small Business Agenda and Executive Order 13272,” May 2003.

⁵The complete “Regulatory Flexibility Analysis and RFA” can be found in the docket for this rulemaking: <http://www.regulations.gov>.

EXHIBIT 1—RELATIVE COSTS OF REGULATORY ALTERNATIVES—Continued

Regulatory alternative	Requirements	Relative cost
3	Only the following three requirements are implemented: 1. File all in-bond application forms electronically. 2. Maximum in-bond transit time of 30 days. 3. Request and receive permission electronically prior to diverting in-bond cargo.	Lowest: Costs are lowest of the three regulatory alternatives because only a relatively small number of entities that currently file in-bond forms by paper only (537 non-air carriers plus an unknown number of other filers) would be affected. These entities must obtain electronic access to CBP or retain a third party agent or service provider.

To determine whether a substantial number of small entities would be affected by the rule, we ideally would have employment and revenue information and data for all affected entities. The SBA defines entities as “small” if they fall below certain size standards in their industry (as defined by a North American Industry Classification System (NAICS) Code), such as the number of employees or average annual receipts.⁶ However, we do not have this information, as well as information identifying all of the entities that may be affected.⁷ Other available descriptive data, such as in-bond shipment or transaction volume, transaction type, and whether an entity files in-bond transactions or report in-bond arrivals, are unreliable since they may not necessarily be related to entity size. As a result, we use national data on entities in the affected industries from the SBA to determine whether a substantial number of small entities are likely to be affected by the rule. Use of these data is imperfect because not all entities included in the SBA data set participate in the processing and movement of in-bond goods. Based on these data, nearly all of the entities in all industry groups likely to be affected by the final rule are small. CBP concludes, therefore, that a substantial number of small entities are likely to be affected by the final rule. CBP has characterized but cannot estimate the potential costs to entities of complying with the final rule. As a result, we cannot quantify the impact on small entities. We, therefore, conclude that the rule may significantly affect a substantial number of small entities.

Following the initial screening analysis, CBP published an IRFA, in accordance to Section 603 of the RFA/SBREFA, for the proposed rule on July

⁶ U.S. SBA, Summary of Size Standards by Industry, as viewed at <http://www.sba.gov/contractingopportunities/officials/size/summaryofssi/index.html> on January 14, 2013. <http://www.sba.gov/contractingopportunities/officials/size/summaryofssi/index.html> on July 28, 2010.

⁷ We only have limited data on 5,081 unique non-air carriers, which comprise at most about 82 percent of all affected entities.

11, 2012.⁸ For the final rule, in accordance to Section 604 of the RFA/SBREFA, CBP has conducted a FRFA that is being published concurrently with the final rule and is available in the docket of this rulemaking.⁹ The following summary of the FRFA presents the impact of this rule on small entities.

The objective of the rule is to improve CBP’s ability to regulate, track, and control in-bond cargo and to ensure that proper duties are paid or that the in-bond merchandise is exported.

Although CBP did not receive any public comments specifically addressing the IRFA or the impacts to small entities, one commenter estimated that the new data, reporting, and monitoring requirements of the proposed rule will increase costs for in-bond carriers in a number of ways. In finalizing the proposed rule, CBP took these cost estimates under advisement and has made changes to the rule to lessen the burden and costs to the public in response to various comments. See Section II.M., Potential Impact, of this document and in the complete FRFA for more information about this comment and CBP’s response.

The Chief Counsel for the Advocacy of the Small Business Administration did not provide any comments on the IRFA for the proposed rule.

The types of entities subject to the rule’s requirements include originating or bonded carriers, brokers, and other supply chain entities (e.g., exporters, manufacturers and suppliers, cargo consolidators, freight forwarders, 3PLs, and CFS) involved in the transaction filing, conveyance, and arrivals reporting of in-bond goods. Based on FY2007 in-bond shipment data, we estimate at least 6,230 trade entities could be affected by the rule, including 5,081 non-air carriers (sea vessel, rail, and truck carriers), between 212 and

⁸ The complete IRFA can be found by searching www.regulations.gov for the docket number USCBP-2012-0002-0052.

⁹ The complete FRFA Final Regulatory Flexibility Act analysis can be found in the docket for this rulemaking: <http://www.regulations.gov>.

221 air carriers, and possibly at least 940 other entities (e.g., freight forwarders, cargo consolidators, 3PLs, brokers, and CFS). The reporting and recordkeeping skills needed are professional skills necessary for preparation of electronic in-bond transactions, arrivals notifications, and diversion requests. These include basic administrative, recordkeeping, and information technology skills used to manage data transaction, shipment, manifest, security, and other data used in the commercial supply chain environment, along with a working knowledge of import shipment arrangements, brokerage, conveyance/shipping, consolidation, and customs procedures and regulation.

Exhibit 1 above lists the regulatory alternatives CBP analyzed in the IRFA; including those that minimized the incremental cost burden to carriers, brokers, and agents, including small entities. CBP was not, however, able to identify any significant regulatory alternatives to the rule that specifically address small entities while also meeting the rule’s objective, which is to improve CBP’s ability to regulate, track, and control in-bond cargo and to ensure that proper duties are paid or that the in-bond merchandise is exported. However, in finalizing this rule, as detailed above and in the complete FRFA contained in the docket, CBP has made changes to the proposed rule, based on public comments that lower costs for entities affected by this rule, including small entities.¹⁰

C. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) requires agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule is necessary for national security and is exempt from these requirements under 2 U.S.C. 1503

¹⁰ As discussed in the complete FRFA, not all costs could be quantified. As such, CBP is unable to quantify the cost savings due to the changes made from the proposed rule.

(Exclusions), which states that UMRA “shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress and any provision in a proposed or final Federal regulation that is necessary for the national security or the ratification or implementation of international treaty obligations.”¹¹

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) the collections of information for this final rule are included in an existing collection for CBP Form 7512 (Office of Management and Budget (OMB) control number 1651–0003). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The estimated burden hours related to CBP Form 7512 and 7512A for OMB Control number 1651–0003 are as follows:

Estimated Number of Respondents:
6,200.

Estimated Number of Responses:
5,400,000

Estimated Time per Response: 10 minutes (0.166 hours).

Estimated Total Annual Burden Hours: 896,400.

The burden hours in this collection have been updated to reflect revised and updated estimates of filers of CBP Form 7512. These most recent data available are also used in the regulatory flexibility analysis above.

V. Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury’s authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

VI. Regulatory Amendments

List of Subjects

19 CFR Part 4

Customs duties and inspection, Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 10

Caribbean Basin initiative, Customs duties and inspection, Exports, Reporting and recordkeeping requirements.

19 CFR Part 12

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 18

Common carriers, Customs duties and inspection, Exports, Freight, Penalties, Reporting and recordkeeping requirements, and Surety bonds.

19 CFR Part 19

Customs duties and inspection, Exports, Freight, Reporting and recordkeeping requirements, Surety bonds, Warehouses, Wheat.

19 CFR Part 113

Common carriers, Customs duties and inspection, Exports, Freight, Laboratories, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 122

Common carriers, Customs duties and inspection, Exports, Freight, Penalties, Reporting and recordkeeping requirements, and Security measures.

19 CFR Part 123

Canada, Customs duties and inspection, Freight, International boundaries, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 141

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 142

Canada, Customs duties and inspection, Mexico, Reporting and recordkeeping requirements.

19 CFR Part 143

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 144

Customs duties and inspection, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 146

Administrative practice and procedure, Customs duties and inspection, Exports, Foreign trade zones, Penalties, Petroleum, Reporting and recordkeeping requirements.

19 CFR Part 151

Cigars and cigarettes, Cotton, Customs duties and inspection, Fruit juices, Laboratories, Metals, Oil imports, Reporting and recordkeeping requirements, Sugar.

19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Exports, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulation

For the reasons set forth in the preamble, this document amends parts 4, 10, 18, 19, 113, 122, 123, 141, 142, 143, 144, 146, 151, and 181 of title 19 of the Code of Federal Regulations as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

■ 2. In § 4.82, revise paragraph (b) to read as follows:

§ 4.82 Touching at foreign port while in coastwise trade.

* * * * *

(b) The master must also present to the port director a coastwise Cargo Declaration in triplicate of the merchandise to be transported via the foreign port or ports to the subsequent ports in the United States. It must describe the merchandise and show the marks and numbers of the packages, the names of the shippers and consignees, and the destinations. The port director will certify the two copies and return them to the master. Merchandise carried by the vessel in bond under a transportation entry pursuant to part 18 of this chapter is not to be shown on the coastwise Cargo Declaration.

* * * * *

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 3. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

■ 4. In § 10.60, revise paragraphs (a), (d), and (f) to read as follows:

§ 10.60 Forms of withdrawals; bond.

(a) Withdrawals from warehouse shall be made on CBP Form 7501. Each withdrawal must contain the statement prescribed for withdrawals in § 144.32 of this chapter and all of the statistical information as provided in § 141.61(e) of this chapter. Withdrawals from

¹¹ “Unfunded Mandates Reform Act of 1995 (UMRA),” 2 U.S.C. 1503.

continuous CBP custody elsewhere than in a bonded warehouse must be made by filing an in-bond application pursuant to part 18 of this chapter, except as provided for by paragraph (h) of this section. When a withdrawal of supplies or other articles is made which may be used on a vessel while it is proceeding in ballast to another port as provided for by § 10.59(a)(3), a notation of this fact shall be made on the withdrawal and the name of the other port given if known.

* * * * *

(d) Except as otherwise provided in § 10.62b, relating to withdrawals from warehouse of aircraft turbine fuel to be used within 30 days of such withdrawal as supplies on aircraft under section 309, Tariff Act of 1930, as amended, when the supplies are to be laden at a port other than the port of withdrawal from warehouse, they shall be withdrawn for transportation in bond to the port of lading by filing an in-bond application pursuant to part 18 of this chapter. The procedure shall be the same as that prescribed in 144.37 of this chapter.

* * * * *

(f) Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous Customs custody elsewhere than in a bonded warehouse for lading at the port of withdrawal, the procedure provided for in § 18.25 of this chapter shall be followed. Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous Customs custody elsewhere than in a bonded warehouse for lading at another port, the procedure set forth in § 18.26 of this chapter shall be followed. There shall be such examination of the articles as may be necessary to satisfy the port director that they are subject to the privileges of section 309, Tariff Act of 1930, as amended, and that the value and quantity declared for them are correct.

* * * * *

■ 5. Revise § 10.61 to read as follows:

§ 10.61 Withdrawal permit.

Upon the filing of the withdrawal and the execution of the bond, when required, the port director shall issue a permit on CBP Form 7501 or in-bond application.

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 6. The general authority citation for part 12 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

■ 7. Revise § 12.5 to read as follows:

§ 12.5 Shipment to other ports.

When imported merchandise, the subject of § 12.1, is shipped to another port for reconditioning or exportation, such shipment must be made in the same manner as shipments in bond in accordance with the requirements of part 18 of this chapter.

■ 8. In § 12.11, revise paragraph (b) to read as follows:

§ 12.11 Requirements for entry and release.

* * * * *

(b) Where plant or plant products are shipped from the port of first arrival to another port or place for inspection or other treatment by a representative of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs and all CBP requirements for the release of the merchandise have been met, the merchandise must be forwarded as an in-bond shipment pursuant to part 18 of this chapter to the representative of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs at the place at which the inspection or other treatment is to take place. No further release by the port director will be required.

■ 9. Revise part 18 to read as follows:

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

Subpart A—General Provisions

- Sec.
- 18.0 Scope; definitions.
- 18.1 In-bond application and entry; general rules.
- 18.2 Carriers, cartmen, and lightermen.
- 18.3 Transfers.
- 18.4 Sealing conveyances, compartments, and containers.
- 18.5 Diversion.
- 18.6 Short shipments; shortages; entry and allowance.
- 18.7 Lading for exportation; notice and proof of exportation; verification.
- 18.8 Liability for not meeting in-bond requirements; liquidated damages; payment of taxes, duties, fees, and charges.
- 18.9 New in-bond movement for forwarded or returned merchandise.
- 18.10 Special manifest.

Subpart B—Immediate Transportation Without Appraisalment

- 18.11 General rules.
- 18.12 Entry at port of destination.

Subpart C—Shipment of Baggage In-Bond

- 18.13 Procedure; manifest.
- 18.14 Shipment of baggage in transit to foreign countries.

Subpart D—Transportation and Exportation

- 18.20 General rules.
- 18.21 [Reserved].
- 18.22 Procedure at port of exportation.
- 18.23 Change of port of exportation or first foreign port; change of entry.
- 18.24 Retention of goods within port limits; dividing of shipments.

Subpart E—Immediate Exportation

- 18.25 Direct exportation.
- 18.26 Indirect exportation.
- 18.27 Port marks.

Subpart F—Merchandise Transported by Pipeline

- 18.31 Pipeline transportation of bonded merchandise.

Subpart G—Merchandise Not Otherwise Subject to CBP Control Exported Under Cover of a TIR Carnet

- 18.41 Applicability.
- 18.42 Direct exportation.
- 18.43 Indirect exportation.
- 18.44 Abandonment of exportation.
- 18.45 Supervision of exportation.

Subpart H—Importer Security Filings

- 18.46 Changes to Importer Security Filing information.

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624; Section 18.1 also issued under 19 U.S.C. 1484, 1557, 1490; Section 18.2 also issued under 19 U.S.C. 1551a; Section 18.3 also issued under 19 U.S.C. 1565; Section 18.4 also issued under 19 U.S.C. 1322, 1323; Section 18.7 also issued under 19 U.S.C. 1490, 1557; 1646a; Section 18.11 also issued under 19 U.S.C. 1484; Section 18.12 also issued under 19 U.S.C. 1448, 1484, 1490; Section 18.13 also issued under 19 U.S.C. 1498(a); Section 18.14 also issued under 19 U.S.C. 1498. Section 18.25 also issued under 19 U.S.C. 1490. Section 18.26 also issued under 19 U.S.C. 1490. Section 18.31 also issued under 19 U.S.C. 1553a.

Subpart A—General Provisions

§ 18.0 Scope; definitions.

(a) *Scope.* Except as provided in parts 122 (Air commerce) and 123 (CBP relations with Canada and Mexico) of this chapter, this part sets forth the requirements and procedures pertaining to the transportation of merchandise in-bond, as authorized by §§ 551, 552, and 553 of the Tariff Act of 1930, as amended (19 U.S.C 1551, 1552, and 1553).

(b) *Definitions.* As used in this part, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different

definition is prescribed for a particular part or portion thereof:

Bonded carrier. “Bonded carrier” means a carrier of merchandise whose bond under § 113.63 of this chapter is obligated for the transportation and delivery of merchandise.

Common carrier. “Common carrier” means a common carrier of merchandise owning or operating a railroad, steamship, pipeline, truck line, or other transportation line or route.

Origination port. “Origination port” is the U.S. port at which the transportation of merchandise in-bond commences.

Port of destination. “Port of destination” is the U.S. port at which merchandise is delivered after being shipped in-bond from the origination port where it was entered as an immediate transportation entry.

Port of diversion. “Port of diversion” is the U.S. port to which merchandise is diverted while in transit from the origination port to the port of destination or the port of exportation.

Port of exportation. “Port of exportation” is the U.S. port at which in-bond merchandise entered for transportation and exportation or for immediate exportation is delivered for exportation from the United States.

§ 18.1 In-bond application and entry; general rules.

(a) **General requirement.** In order to transport merchandise in-bond (transport imported merchandise, secured by a bond, from one port to another prior to the appraisal of the merchandise and without the payment of duties), an in-bond application as described in paragraph (d) of this section is required. An in-bond application consists of a transportation entry and a manifest. A transportation entry as described in paragraph (b) of this section may be made for any imported merchandise upon its arrival at a port of entry, subject to the prohibitions and restrictions provided in this part.

(b) **Types of transportation entries and withdrawals.** The following types of transportation entries and withdrawals may be made for merchandise to be transported in-bond:

- (1) Entry for immediate transportation (IT).
- (2) Warehouse withdrawal for immediate transportation.
- (3) Warehouse withdrawal for immediate exportation or for transportation and exportation.
- (4) Entry for transportation and exportation (T&E).
- (5) Entry for immediate exportation (IE).
- (6) Entry of vessel and aircraft supplies for immediate exportation (IE).

(7) Entry of vessel and aircraft supplies for transportation and exportation (T&E).

(c) **Who may file.** A transportation entry may be filed by:

(1) The carrier, or authorized agent of the carrier, that brings the merchandise to the origination port;

(2) The carrier, or authorized agent of the carrier, that is to accept the merchandise under its bond or a carnet for transportation to the port of destination or the port of exportation; or

(3) Any person or the authorized agent of any person, who has a sufficient interest in the merchandise as shown by the bill of lading or manifest, a certificate of the importing carrier (such as a power of attorney or letter of authorization), or by any other document. CBP may request evidence to demonstrate sufficient interest.

(d) **In-bond application.** An in-bond application consisting of a transportation entry and manifest must be transmitted to CBP via a CBP-approved EDI system as specified in paragraph (d)(2) of this section in order to transport merchandise in-bond.

(1) **Contents.** Except for the other identifying information described in paragraph (d)(1)(iii) of this section which is optional, the in-bond application must contain the following information:

(i) **Commodity HTSUS number.** The six-digit Harmonized Tariff Schedule of the United States (HTSUS) number of the merchandise must be provided.

(ii) **Description of merchandise subject to regulation by another government agency.** Merchandise subject to regulation by a U.S. government agency other than CBP must contain a sufficient description of the merchandise to enable the agency concerned to determine the contents of the shipment.

(iii) **Other identifying information.** If a visa, permit, license, entry number, or other similar number or identifying information has been issued by the U.S. Government, foreign government or other issuing authority, relating to the merchandise, the visa, permit, license, entry number, or other similar number or identifying information may be provided.

(iv) **Quantity.** The quantity of the cargo laden aboard the conveyance must be provided. This means the quantity of the smallest external packing unit. Containers and pallets do not constitute acceptable information. For example, a container holding 10 pallets with 200 cartons should be described as 200 cartons. If the reported quantity is not correct or if it changes, the in-bond record must be updated or amended in

accordance with paragraph (h) of this section. The updating of the quantity of the merchandise does not relieve the carrier whose bond is obligated from liquidated damages for any shortage.

(v) **Container number and seals.** The container number of the container in which the merchandise is being transported and the seal number of the seal that seals the container (see § 18.4) must be provided. If the seal number is not known when the in-bond application is filed, the in-bond application must be updated with the seal number within two business days from the date the initial carrier takes possession of the sealed merchandise.

(vi) **Destination.** For IT shipments, the port of destination in the United States must be provided. For T&E and IE shipments, the port of exportation and the first foreign port must be provided. If any of this information changes, the in-bond record must be updated or amended in accordance with paragraph (h) of this section.

(2) **Method of submission.** The in-bond application must be electronically transmitted to CBP via a CBP-approved EDI system, except as described in § 18.31 relating to the in-bond transportation of merchandise by pipeline, or air (see 19 CFR part 122) or under a TIR carnet (see 19 CFR part 115). In the event that EDI functionality is unavailable for filing an in-bond application, or any related in-bond filing, the Commissioner or his designee may authorize an alternative method.

(3) **Timing.** The in-bond application may be submitted at any time prior to the merchandise departing the origination port.

(e) **Bond required.** A custodial bond on CBP Form 301, containing the bond conditions set forth in § 113.63 of this chapter, is required in order to transport merchandise in-bond under the provisions of this part.

(f) **Movement authorization required.** Authorization from CBP is required before merchandise can be transported in-bond. Authorization for the movement of merchandise will be transmitted by CBP via a CBP-approved EDI system.

(g) **Supervision—(1) Generally.** When merchandise is delivered to a bonded carrier for transportation in-bond, CBP may, in its discretion, require that the merchandise be laden on the conveyance only under CBP supervision.

(2) **Merchandise delivered from warehouse.** When merchandise is delivered from a warehouse to a bonded carrier for transportation in-bond, supervision of lading will be accomplished in accordance with the

procedure set forth in § 19.6(b) of this chapter.

(3) *Merchandise delivered from foreign trade zone.* When merchandise is delivered from a foreign trade zone to a bonded carrier for transportation in-bond, supervision of lading will be accomplished in accordance with the procedure set forth in § 146.71(a) of this chapter.

(h) *Updating and amending the in-bond record.* The filer of the in-bond application or any other party named in paragraph (c) of this section, with authorization of the party whose bond is obligated, must update and/or amend the in-bond record as required under the provisions of this part via a CBP-approved EDI system. The in-bond record must be updated or amended within two business days of the event that requires updating and/or amending of the in-bond record.

(i) *In-transit time*—(1) *Maximum in-transit time.* Except for merchandise to be transported via barge, merchandise to be transported in-bond must be delivered to CBP at the port of destination or port of exportation within 30 days from the date of conveyance arrival at the origination port (if the in-bond application has been received and approved prior to conveyance arrival), or the date CBP provides movement authorization to the in-bond applicant, whichever is later. Merchandise to be transported via barge for all or part of the in-bond movement, must be delivered to CBP at the port of destination or port of exportation within 60 days from the date of conveyance arrival at the origination port (if the in-bond application has been received and approved prior to conveyance arrival), or the date CBP provides movement authorization to the in-bond applicant, whichever is later. If the merchandise is subject to examination or inspection by CBP or another government agency, the time that the merchandise is held due to the examination or inspection will not be considered part of the 30-day or 60-day in-transit time. Neither the diversion to another port nor the filing of a new in-bond application extends the maximum in-transit time. Failure to deliver the merchandise within the prescribed period constitutes an irregular delivery. In-bond merchandise transported by pipeline is not subject to the time limits in this section.

(2) *Extension of in-transit time.* The in-transit requirement may be extended by CBP upon a written request to the port director of the port of destination or port of exportation. The decision to extend the in-transit time period is within the discretion of CBP. Factors that may be considered, among any

others deemed applicable by CBP, include extraordinary circumstances such as major transportation network disruptions, natural disasters, and other emergencies beyond the control of the party requesting the extension.

(3) *Restriction of in-transit time.* CBP or any other government agency with jurisdiction over the merchandise may shorten the in-transit time to less than 30 or 60 days. CBP will provide notice of a government-shortened in-transit time with the movement authorization.

(j) *Report of arrival.* Within two business days after the arrival of any portion of an in-bond shipment at the port of destination or the port of exportation, CBP must be notified via a CBP-approved EDI system that the merchandise has arrived. The notification must include the Facilities Information and Resources Management System (FIRMS) code of the location of the merchandise within the port. Failure to report the arrival or the FIRMS code for the physical location of the merchandise transported in-bond within the prescribed period constitutes an irregular delivery.

(k) *General order merchandise; exportation.* Any merchandise covered by an in-bond shipment that has arrived at the port of destination or the port of exportation must be entered, exported, or admitted to a foreign-trade zone pursuant to this part within 15 calendar days from the date of arrival of the entire in-bond shipment at the port of destination or port of exportation. Sixteen days after in-bond merchandise arrives in the port of destination or port of exportation, the merchandise will become subject to general order requirements pursuant to § 4.37, § 122.50, or § 123.10 of this chapter, as applicable.

(l) *Special classes of merchandise*—(1) *Health, safety and conservation.* CBP may determine that merchandise not in compliance with an applicable rule, regulation, law, standard or ban, relating to health, safety or conservation, will not be released for transportation in-bond without the authorization of the governmental agency administering such rule, regulation, law, standard or ban.

(2) *Plants and plant products.* Merchandise subject upon importation to examination, disinfection, or further treatment under the USDA Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine program, will only be released for transportation in-bond with the authorization of APHIS under regulations issued by that program. (See §§ 12.10 to 12.15 of this chapter).

(3) *Prohibited articles.* Articles prohibited admission into the commerce of the United States may not be entered for transportation in-bond. Any such merchandise offered for entry for that purpose may either be denied entry or be seized. However, CBP may permit exportation or transportation and exportation either with authorization from the governmental agency having regulatory authority over the prohibited articles or in compliance with the regulations of such agency.

(4) *Narcotics and other drugs, medicines, or chemicals*—(i) *Narcotics.* Narcotics prohibited admission into the commerce of the United States may not be entered for transportation in-bond and any such merchandise offered for entry for that purpose will be seized, except that exportation or transportation and exportation may be permitted with authorization from the Drug Enforcement Agency (DEA) and/or compliance with the regulations of the DEA.

(ii) *Other drugs, medicines, or chemicals.* Articles entered for transportation in-bond that are manifested merely as drugs, medicines, or chemicals, without evidence to satisfy the port director that they are non-narcotic, will be detained and subjected, at the carrier's risk and expense, to such examination as may be necessary to satisfy the port director that they are not of a narcotic character. A properly verified certificate of the shipper, specifying the items in the shipment and stating that they are not narcotic, may be accepted by the port director to establish the character of such a shipment.

(5) *Explosives.* Explosives may not be transported in-bond unless the importer has first obtained a license or permit from the proper governmental agency. In such case the explosives may be entered for immediate transportation, for transportation and exportation, or for immediate exportation as specified by the approving government agency. Governmental agencies with regulatory authority over explosives include the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Department of Transportation (DOT), and the U.S. Coast Guard (USCG).

(6) *Livestock.* Carload shipments of livestock will not be entered for in-bond transportation unless they will arrive at the port of destination named in the in-bond application before it becomes necessary to remove the seals for the purpose of watering and feeding the animals, or unless the route is such that the removal of the seals and the watering, feeding, and reloading of the

stock may be done under CBP supervision.

(m) *Divided shipments.* After reaching the destination port, the port to which the merchandise has been diverted under § 18.5(a), in-bond merchandise may be divided into multiple shipments with a portion of the initial in-bond shipment being entered for consumption or warehouse, and the remainder shipped under a new in-bond application. The carrier or any of the parties named in paragraph (c) of this section must, in accordance with the filing requirements of this section, submit a new in-bond application for each portion of the original shipment to be transported in-bond. Divided shipments for merchandise being transported under cover of a carnet are prohibited.

§ 18.2 Carriers, cartmen, and lightermen.

(a) *Transportation of merchandise in-bond by bonded carriers—(1) Generally.* Except as provided for in paragraph (b) of this section, merchandise to be transported from one port to another in the United States in-bond must be delivered to a common carrier, contract carrier, freight forwarder, or private carrier, each of which must be bonded for that purpose. Such merchandise delivered to a bonded common carrier, contract carrier, or freight forwarder may be transported with the use of facilities of other bonded or non-bonded carriers; however, the responsibility for the merchandise will remain with the common carrier, contract carrier, or freight forwarder that obligated its bond for that purpose. Only vessels entitled to engage in the coastwise trade (see § 4.80 of this chapter) will be entitled to transport merchandise under this section.

(2) *Merchandise transported under a TIR carnet.* Merchandise to be transported from one port to another in the United States under cover of a TIR carnet (see part 114 of this chapter), except merchandise not otherwise subject to CBP control, as provided in §§ 18.41 through 18.45, must be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or non-bonded common or contract carriers. The TIR carnet will be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond will be responsible as provided in § 114.22(c) of this chapter.

(3) *Merchandise transported under an A.T.A. or a TECRO/AIT carnet.* Merchandise to be transported from one port to another in the United States

under cover of an A.T.A. or TECRO/AIT carnet (see part 114 of this chapter) must be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or non-bonded common or contract carriers. The A.T.A. or TECRO/AIT carnet will be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond will be responsible as provided in § 114.22(d) of this chapter.

(b) *Transportation of merchandise in-bond between certain ports by bonded cartmen or lighterman.* Pursuant to Public Resolution 108, of June 19, 1936, (19 U.S.C. 1551, 1551a) and subject to compliance with all other applicable provisions of this part, CBP, upon the request of a party named in § 18.1(c), may permit merchandise that has been entered and subject to CBP examination to be transported in-bond between the ports of New York, Newark, and Perth Amboy, by bonded cartmen or lightermen duly qualified in accordance with the provisions of part 112 of this chapter, if CBP is satisfied that the transportation of such merchandise in this manner will not endanger the revenue and does not pose a risk to health, safety or security.

§ 18.3 Transfers.

(a) *Transfer to another conveyance.* Merchandise being transported in-bond may be transferred to another conveyance at any time. CBP notification is not required. The transfer to one or more conveyances will not extend the maximum in-transit time set forth in § 18.1(i).

(b) *Transfer to another bonded carrier.* Except as provided in § 18.31(d)(3), when merchandise is transferred to a bonded carrier that assumes the liability for the in-bond shipment, a report of arrival for the merchandise must be filed by the original bonded carrier and a new in-bond application must be filed by the subsequent bonded carrier pursuant to § 18.1.

(c) *Transfer of merchandise covered by a TIR Carnet generally prohibited.* Merchandise covered by a TIR carnet may not be transferred except in cases in which the unloading of the merchandise from a container or road vehicle is necessitated by casualty en route. In the event of transfer, a TIR approved container or road vehicle must be used if available. If the transfer takes place under CBP supervision, the CBP officer must execute a certificate of transfer on the appropriate TIR carnet voucher.

(d) *Transfer by bonded cartmen.* All transfers to or from the conveyance or warehouse of merchandise being transported in-bond must be made under the provisions of part 125 of this chapter and at the expense of the parties in interest, unless the bond of the carrier on CBP Form 301, containing the bond conditions set forth in § 113.63 of this chapter or a TIR carnet, is liable for the safekeeping and delivery of the merchandise while it is being transferred.

§ 18.4 Sealing conveyances, compartments, and containers.

(a) *Requirements, waiver, and TIR carnets—(1) Seals required.* Conveyance, compartments, or containers transporting in-bond merchandise must be sealed and the seals must remain intact until the merchandise arrives at the port of destination or the port of exportation. The seals to be used and the method for sealing conveyances, compartments, or containers must meet the requirements of §§ 24.13 and 24.13a of this chapter.

(2) *Waiver.* (i) CBP may waive the sealing of a conveyance, compartment, or container in which bonded merchandise is transported if CBP determines that the sealing of the conveyance, compartment, or container is unnecessary to protect the revenue or to prevent violations of the customs laws and regulations.

(ii) Examples of situations where CBP may waive the waiver of the sealing requirement are when the conveyance, compartment, or container cannot be effectively sealed, as in the case of merchandise shipped in open cars or barges or on the decks of vessels, when it is known that any seals would necessarily be removed outside the jurisdiction of the United States for the purpose of discharging or taking on cargo, or when it is known that the breaking of the seals will be necessary to ventilate the hatches.

(3) *TIR carnets.* The port director will cause a CBP seal to be affixed to a container or road vehicle that is being used to transport merchandise under cover of a TIR carnet unless the container or road vehicle bears a customs seal (domestic or foreign). The port director will likewise cause a CBP seal or label to be affixed to heavy or bulky goods being so transported. If, however, the port director has reason to believe that there is a discrepancy between the merchandise listed on the Goods Manifest of the carnet and the merchandise that is to be transported, the port director may cause a CBP seal or label to be affixed only when the

listing of the merchandise in the carnet and a physical inventory agree.

(b) *Commingled merchandise*—(1) *Transported in a sealed conveyance, compartment, or container.*

Merchandise that is not covered by a bond may be transported in a sealed conveyance, compartment, or container that contains bonded merchandise if the merchandise is destined for the same or subsequent port as the bonded merchandise.

(2) *Transported in a conveyance, compartment, or container that is not sealed.* Merchandise that is not covered by a bond may be transported with bonded merchandise in a conveyance, compartment, or container that is not sealed, if the in-bond merchandise is corded and sealed, or affixed with a warning label or tag as described in paragraph (b)(3) of this section.

(3) *Warning label or tag*—(i) *Warning label.* The required warning label for in-bond merchandise described in paragraph (b)(2) of this section, must be on bright red paper, not less than 5 by 8 inches in size, unless the size of the package renders the use of a 5 by 8 inch warning label impracticable because of lack of space; then a 3 by 5 inch label may be used. Alternatively, a high visibility, permanently affixed warning label, whether as a continuous series in tape form or otherwise, but not less than 1½ by 3 inches, and not to be removed until the in-bond movement is completed, may be used on any size package. The warning label must contain the following words in black or white lettering of a conspicuous size:

U.S. Customs and Border Protection

This package is under bond and must be delivered intact to the CBP officer in charge at the port of destination or to such other place as authorized by CBP.

Warning. Two years' imprisonment, a fine, or both, is the penalty for unlawful removal of this package or any of its contents.

(ii) *Tag.* When it is impossible to attach the warning label by pasting, a bright red shipping tag of convenient size, large enough to be conspicuous and containing the same legend as the label, shall be used in lieu of a label. Such tag shall be wired or otherwise securely fastened to the packages in such manner as not to damage the merchandise.

(4) *Merchandise transported under carnet.* Merchandise moving under cover of a carnet may not be consolidated with other merchandise.

(c) *Removal and replacement of seals.* If it becomes necessary at any point in transit to remove seals from a conveyance, compartment, or container containing bonded merchandise for the

purpose of transferring its contents to another conveyance, compartment, or container, or to gain access to the shipment because of casualty or for other good reason, such as when required by law enforcement or another government agency, a responsible agent of the carrier may remove the seals, supervise the transfer or handling of the merchandise, and seal the conveyance, compartment, or container in which the shipment goes forward. Updated seal numbers must be transmitted to CBP pursuant to § 18.1(h) and general recordkeeping requirements under 19 CFR part 163 apply.

(d) *Containers or road vehicles accepted for transport under customs seal; requirements.* (1)(i) *Containers covered by the Customs Convention on Containers.* Containers covered by the Customs Convention on Containers will be accepted for transport under customs seal if:

(A) Durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers, and

(B) Constructed and equipped as outlined in Annex 1 to the Customs Convention on Containers, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 2 to that Convention or by a metal plate showing design type approval by a competent authority.

(ii) *Containers carrying merchandise covered by a TIR carnet.* Containers carrying merchandise covered by a TIR carnet will be accepted for transport under customs seal if:

(A) Durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers,

(B) Constructed and equipped as outlined in Annex 6 to the TIR Convention, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 8 to that Convention, or by a metal plate showing design type approval by a competent authority, and

(C) If the container or road vehicle hauling the container has affixed to it a rectangular plate bearing the letters "TIR" in accordance with Article 31 of the TIR Convention.

(2) *Road vehicles carrying merchandise covered by a TIR carnet.* Road vehicles carrying merchandise covered by a TIR carnet will be accepted for transport under customs seal if:

(i) Durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers,

(ii) Constructed and equipped as outlined in Annex 3 to the TIR

Convention, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 5 to that Convention, or by a metal plate showing design type approval by a competent authority, and

(iii) If the road vehicle has affixed to it a rectangular plate bearing the letters "TIR" in accordance with Article 31 of the TIR Convention.

(3) *CBP refusal.* The port director may refuse to accept for transport under customs seal a container or road vehicle bearing evidence of approval if, in the port director's opinion, the container or road vehicle no longer meets the requirements of the applicable Convention.

(4) *CBP acceptance for transport.* Containers or road vehicles that are not approved under the provisions of a Customs Convention may be accepted for transport under customs seal only if the port director at the origination port is satisfied that the container or road vehicle can be effectively sealed and no goods can be removed from or introduced into the container or road vehicle without obvious damage to it or without breaking the seal. A container or road vehicle so accepted shall not carry merchandise covered by a TIR carnet.

§ 18.5 Diversion.

(a) *Procedure.* In order to change the port of destination or the port of exportation of an in-bond movement, the filer of the in-bond application must submit a request to divert merchandise via a CBP-approved EDI system. Permission for the diversion and movement of merchandise will be transmitted via a CBP-approved EDI system. If the request to divert merchandise is denied, such merchandise must be delivered to the original port of destination or port of exportation that was named in the in-bond application. The decision to grant or deny permission to divert merchandise is within the discretion of CBP. Denials may result from, for example, restrictions placed upon the movement of goods by government agencies.

(b) *In-transit time.* The approval of a request to divert merchandise for transportation in-bond does not extend the in-transit time specified in § 18.1(i)(1) of this part. The diverted merchandise must be delivered to the port of diversion within the in-transit time specified in § 18.1(i)(1) from the date CBP first authorized the in-bond movement, unless an extension is granted pursuant to § 18.1(i)(2).

(c) *Diversion of cargo subject to restriction, prohibition or regulation by*

other federal agency or authority. Merchandise subject to a law, regulation, rule, standard or ban that requires permission or authorization by another federal agency or authority before importation may be restricted from being diverted on behalf of the authorizing agency.

§ 18.6 Short shipments; shortages; entry and allowance.

(a) *Notification of short shipment.* When an in-bond shipment arrives at the port of destination or the port of exportation and the cargo covered by the original in-bond application is short, the arriving carrier must notify CBP of the shortage when submitting the notice of arrival via a CBP-approved EDI system.

(b) *New in-bond application required.* The carrier or any of the parties named in § 18.1(c) must, in accordance with the filing requirements of § 18.1, submit a new in-bond application to transport short shipped packages that have been located or recovered to the port of destination or port of exportation provided in the in-bond application. Reference must be made in the new in-bond application to the original transportation entry.

(c) *Demand for redelivery; entry.* When a shipment or a portion of a shipment is not delivered, or when delivery is to an unauthorized location or is delivered to the consignee without the permission of CBP, CBP may demand return (redelivery) of the merchandise to CBP custody. The demand must be made no later than 30 days after the shortage, delivery, or failure to deliver is discovered by CBP. The demand for the redelivery of the merchandise to CBP custody must be made to the bonded carrier, cartman, or lighterman identified in the in-bond application. The demand for the redelivery of the merchandise will be made on CBP Form 4647, Notice of Redelivery, other appropriate form or letter, or by an electronic equivalent thereof. A copy of the demand or electronic equivalent thereof, with the date of mailing or delivery noted thereon, must be retained by the port director and made part of the in-bond entry record. Entry of the merchandise may be accepted if the merchandise can be recovered intact without any of the packages having been opened. In such cases, any shortage from the invoice quantity will be presumed to have occurred while the merchandise was in the possession of the bonded carrier.

(d) *Failure to redeliver; entry.* If the merchandise cannot be recovered intact, entry will be accepted in accordance with § 141.4 of this chapter for the full

manifested quantity, unless a lesser amount is otherwise permitted in accordance with subpart A of part 158. Except as provided in paragraph (e) of this section, if the merchandise is not returned to CBP custody within 30 days of the date of mailing of the demand for redelivery, if mailed, or within 30 days of the date of transmission, if transmitted by a method other than by mail, there shall be sent to the party whose bond is obligated on the transportation entry a demand for liquidated damages on CBP Form 5955–A. CBP will also seek the payment of duties, taxes, and fees, where appropriate, pursuant to § 18.8(c).

(e) *Failure to redeliver merchandise covered by a carnet.* If merchandise covered by a carnet cannot be recovered intact as specified in paragraph (c) of this section, entry will not be accepted; there will be sent to the appropriate guaranteeing association a demand for liquidated damages, duties, and taxes as prescribed in § 18.8(d); and, if appropriate, there will also be sent to the initial bonded carrier a demand for any excess, as provided in § 114.22(e) of this chapter. Demands must be made on the forms specified in paragraph (d) of this section.

(f) *Allowance.* An allowance in duty on merchandise reported short at destination, including merchandise found by the appraising officer to be damaged and worthless, and animals and birds found by the discharging officer to be dead on arrival at destination, must be made in accordance with law.

(g) *Rail and searain.* In the case of shipments arriving in the United States by rail or searain, which are forwarded under CBP in-bond seals under the provisions of subpart D of part 123 of this chapter, and § 18.11, or § 18.20, a notation must be made by the carrier or shipper in the in-bond application, to show whether the shipment was transferred to the car designated in the manifest and whether it was laden in the car in the foreign country. If laden on the car in a foreign country, the country must be identified in the notation.

§ 18.7 Lading for exportation; notice and proof of exportation; verification.

(a) *Exportation—(1) Notice.* Within two business days after the arrival at the port of exportation of any portion of an in-bond shipment, CBP must be notified via a CBP approved EDI of the arrival of the merchandise pursuant to § 18.1(j). Failure to report the arrival of bonded merchandise within the prescribed period will constitute an irregular delivery.

(2) *Time to export.* Within 15 calendar days after arrival of the last portion of a shipment arriving at the port of exportation under a transportation and exportation entry, the entire shipment of merchandise must be exported. On the 16th day the merchandise will become subject to general order requirements under § 4.37, § 122.50, or § 123.10 of this chapter, as applicable.

(3) *Notice and proof of exportation.* Within two business days after exportation, the in-bond record must be updated via a CBP approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter.

(b) *Supervision.* The port director will require such supervision of the lading for exportation of merchandise covered by an entry or withdrawal for exportation or for transportation and exportation only as is reasonably necessary to satisfy the port director that the merchandise has been laden on the exporting conveyance.

(c) *Verification.* CBP may verify export entries and withdrawals against the records of the exporting carriers. Such verification may include an examination of the carrier's records of claims and settlement of export freight charges and any other records that may relate to the transaction. The exporting carrier must maintain these records for five years from the date of exportation of the merchandise.

§ 18.8 Liability for not meeting in-bond requirements; liquidated damages; payment of taxes, duties, fees, and charges.

(a) *Liability.* The party whose bond is obligated on the transportation entry will be liable for breach of any of the requirements found in this part, any other regulations governing the movement of merchandise in bond, and any of the other conditions specified in the bond. This includes, but is not limited to shortages, irregular delivery, or non-delivery, at the port of destination or port of exportation of the merchandise transported in-bond; the failure to export merchandise transported in bond pursuant to a transportation and exportation or immediate exportation entry; and, the failure to maintain intact seals or the unauthorized removal of seals. Appropriate commercial or government documentation may be provided to CBP as proof of delivery and/or exportation. Any loss found to exist at the port of destination or port of exportation will be presumed to have occurred while the merchandise was in the possession of

the party whose bond was obligated under the transportation entry, unless conclusive evidence to the contrary is produced.

(b) *Liquidated damages.* (1) The party whose bond is obligated on the transportation entry is liable for payment of liquidated damages if there is a failure to comply with any of the requirements found in this part, any other regulations governing the movement of merchandise in bond, and any of the other conditions specified in the bond.

(2) *Petition for relief.* In any case in which liquidated damages are imposed in accordance with this section and CBP is satisfied by the evidence submitted with a petition for relief filed in accordance with the provisions of part 172 of this chapter that any violation of the terms and conditions of the bond occurred without any intent to evade any law or regulation, CBP may cancel such claim upon the payment of any lesser amount or without the payment of any amount as may be deemed appropriate under the law and in view of the circumstances.

(c) *Taxes, duties, fees, and charges.* In addition to the liquidated damages described in paragraph (b) of this section, the party whose bond is obligated on the transportation entry will be liable for any duties, taxes, and fees accruing to the United States on the missing merchandise, together with all costs, charges, and expenses, caused by the failure to make the required transportation, report, delivery, entry and/or exportation. The amount of duties, taxes, fees, and charges owed to the United States under this paragraph is not limited to the amount of the bond obligated on the transportation entry.

(d) *Carnets—(1) TIR carnets.* (i) The domestic guaranteeing association will be jointly and severally liable with the initial bonded carrier for duties, taxes, and fees accruing to the U.S., and any other charges imposed, in lieu thereof, as the result of any shortage, irregular delivery, or nondelivery at the port of destination or port of exportation of merchandise covered by a TIR carnet. The liability of the domestic guaranteeing association is limited to \$50,000 per TIR carnet for duties, taxes, and sums collected in lieu thereof. Penalties imposed as liquidated damages against the initial bonded carrier, and sums assessed against the guaranteeing association in lieu of duties and taxes for any shortage, irregular delivery, or nondelivery will be in accordance with this section. If a TIR carnet has not been discharged or has been discharged subject to a reservation, the guaranteeing association

will be notified within one year of the date upon which the carnet is taken on charge, including time for receipt of the notification, except that if the discharge was obtained improperly or fraudulently the period will be two years. However, in cases that become the subject of legal proceedings during the above-mentioned period, no claim for payment will be made more than one year after the date when the decision of the court becomes enforceable.

(ii) Within three months from the date demand for payment is made by the port director as provided by § 18.6(e), the guaranteeing association must pay the amount claimed, except that if the amount claimed exceeds the liability of the guaranteeing association under the carnet (see § 114.22(d) of this chapter), the carrier must pay the excess. The amount paid will be refunded if, within a period of one year from the date on which the claim for payment was made, it is established to the satisfaction of the Commissioner of CBP that no irregularity occurred. CBP may cancel liquidated damages assessed against the guaranteeing association to the extent authorized by paragraph (b) of this section.

(2) *A.T.A. or TECRO/AIT carnets.* The domestic guaranteeing association is jointly and severally liable with the initial bonded carrier for pecuniary penalties, liquidated damages, duties, fees, and taxes accruing to the United States and any other charges imposed as the result of any shortage, irregular delivery, failure to comply with sealing requirements in this part, and any non-delivery at the port of destination or port of exportation of merchandise covered by an A.T.A. or TECRO/AIT carnet. However, the liability of the guaranteeing association must not exceed the amount of the import duties by more than 10 percent. If an A.T.A. or TECRO/AIT carnet is unconditionally discharged with respect to certain goods, the guaranteeing association will no longer be liable on the carnet with respect to those goods unless it is subsequently discovered that the discharge of the carnet was obtained fraudulently or improperly or that there has been a breach of the conditions of temporary admission or of transit. No claim for payment will be made more than one year following the date of expiration of the validity of the carnet. The guaranteeing association will be allowed a period of six months from the date of any claim by the port director in which to furnish proof of the reexportation of the goods or of any other proper discharge of the A.T.A. or TECRO/AIT carnet. If such proof is not furnished within the time specified, the

guaranteeing association must either deposit or provisionally pay the sums. The deposit or payment will become final three months after the date of the deposit or payment, during which time the guaranteeing association may still furnish proof of the reexportation of the goods to recover the sums deposited or paid.

§ 18.9 New in-bond movement for forwarded or returned merchandise.

The carrier or any of the parties named in § 18.1(c) must, in accordance with the filing requirements of § 18.1, submit a new in-bond application in order to forward or return merchandise from the port of destination or port of exportation named in the original in-bond application, or from the port of diversion, to any another port. If the merchandise is moving under cover of a carnet, the carnet may be accepted as a transportation entry.

§ 18.10 Special manifest.

(a) *General.* Merchandise for which no other type of bonded movement is appropriate (e.g., prematurely discharged or overcarried merchandise and other such types of movements whereby the normal transportation-in-bond procedures are not applicable) may be shipped in-bond from the port of unloading to the port of destination, port of exportation or port of diversion where applicable, upon approval by CBP.

(b) *Filing requirements.* The carrier or any of the parties named in § 18.1(c) may, in accordance with the filing requirements of § 18.1, submit an in-bond application, requesting permission to transport merchandise described in paragraph (a) of this section in-bond as a special manifest. Authorization for the movement of merchandise will be transmitted via a CBP-approved EDI system. The party submitting the in-bond application must identify the relevant merchandise and also identify the date and entry number of any entry made at the port of destination covering the merchandise to be returned, if known. For diversion of cargo, see §§ 4.33, 4.34, and 18.5 of this chapter. When no entry is identified, the port director may approve the shipment pursuant to this section.

Subpart B—Immediate Transportation Without Appraisal

§ 18.11 General rules.

(a) *Delivery outside port limits.* Merchandise covered by an entry for immediate transportation, including a TIR carnet, or a manifest of baggage shipped in-bond (other than baggage to be forwarded in-bond to a CBP station—

see § 18.13(a)), may be delivered to a place outside a port of entry for examination and release as contemplated by 19 U.S.C. 1484(c), and in accordance with the provisions of § 151.9 of this chapter.

(b) *Divided shipments.* One or more entire packages of merchandise covered by an invoice from one consignor to one consignee may be entered for consumption or warehouse at the port of first arrival, and the remainder entered for immediate transportation, provided that all of the merchandise covered by the invoice is entered and a TIR carnet which may cover such merchandise is discharged as to that merchandise.

(c) *Consolidated loads and combined shipments.* Several importations may be consolidated into one immediate transportation entry when bills of lading or carrier's certificates name only one consignee at the port of first arrival. However, merchandise moving under cover of a TIR carnet may not be consolidated with other merchandise.

(d) *Textiles.* Textiles and textile products subject to § 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854) must be described in such detail as to enable the port director to estimate the duties and taxes, if any, due. The port director may require evidence to satisfy him or her of the approximate correctness of the value and quantity stated in the entry (e.g., detailed quantity description: 14 cartons, 2 dozen per carton); detailed description of the textiles or textile products including type of commodity and chief fiber content (e.g., men's cotton jeans or women's wool sweaters); net weight of the textiles or textile products (including immediate packing but excluding pallet); total value of the textiles or textile products; manufacturer or supplier; country of origin; and name(s) and address(es) of the person(s) to whom the textiles and textile products are consigned.

§ 18.12 Entry at port of destination.

(a) *Arrival procedures.* Merchandise received under an immediate transportation entry at the port of destination may be admitted to a FTZ, entered into a bonded warehouse, entered for consumption, transportation and exportation, immediate exportation, immediate transportation, or any other form of entry, within 15 calendar days from the date of arrival at the port of destination and is subject to all the conditions pertaining to merchandise entered at a port of first arrival.

(b) *Entry.* The right to make entry at the port of destination will be determined in accordance with the

provisions of 19 U.S.C. 1484 and the regulations promulgated thereunder.

(c) *Entry at subsequent ports.* When a portion of a shipment is entered at the port of first arrival and the remainder of the shipment is entered for consumption or warehouse at one or more subsequent ports, the entry at each subsequent port may be made on an extract of the invoice as provided for in § 141.84 of this chapter.

(d) *General order merchandise.* All merchandise included in an immediate transportation entry not entered pursuant to § 18.12(a) within 15 calendar days from the date of arrival at the port of destination will become subject on the 16th day to general order requirements pursuant to § 4.37, § 122.50, or § 123.10 of this chapter, as applicable.

Subpart C—Shipment of Baggage In-Bond

§ 18.13 Procedure; manifest.

(a) *In-bond application required.* Baggage may be forwarded in-bond to another port of entry, or to a Customs station listed in § 101.4 of this chapter without examination or assessment of duty at the port or station of first arrival at the request of the passenger, the transportation company, or the agent of either, by filing an in-bond application in accordance with the provisions of § 18.1.

(b) *Coast to coast transportation.* Baggage arriving in-bond or otherwise at a port on the Atlantic or Pacific coast, destined to a port on the opposite coast, may be laden under CBP supervision, without examination and without being placed in-bond, on a vessel proceeding to the opposite coast, provided the vessel will proceed to the opposite coast without stopping at any other port on the first coast.

§ 18.14 Shipment of baggage in transit to foreign countries.

The baggage of any person in transit through the United States from one foreign country to another may be shipped over a bonded route for exportation. Such baggage must be shipped under the regulations prescribed in § 18.13. See § 123.64 of this chapter for the regulations applicable to baggage shipped in transit through the United States between points in Canada or Mexico.

Subpart D—Transportation and Exportation

§ 18.20 General rules.

(a) *Classes of goods for which a transportation and exportation entry is authorized.* Entry for transportation and

exportation may be made under § 553, Tariff Act of 1930, as amended (19 U.S.C. 1553), for any merchandise, except as provided under § 18.1(l).

(b) *Filing requirement.* Transportation and exportation entries must be filed via a CBP-approved EDI system and in accordance with § 18.1.

(c) *Entry procedures.* Except as provided for in subparts D, E, F and G of part 123 of this chapter (relating to merchandise in transit through the United States between two points in contiguous foreign territory), when merchandise is entered for transportation and exportation, a (TIR) carnet, three copies of an air waybill (see § 122.92 of this chapter), or the in-bond application must be submitted to CBP (see § 18.1). The port director may require the carrier to provide to CBP additional information and documentation related to the delivery of the merchandise to the bonded carrier.

(d) *No bonded common carrier facilities available.* Except for merchandise covered by a carnet (see § 18.2(a)(2) and (3)), in places where no bonded common carrier facilities are reasonably available and merchandise is permitted to be transported otherwise than by a bonded common carrier, the port director may permit entry in accordance with the procedures outlined in this section if he or she is satisfied that the revenue will not be endangered. A bond on CBP Form 301, containing the bond conditions set forth in § 113.62 of this chapter in an amount equal to double the estimated duties that would be owed will be required when the port director deems such action necessary. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter within 30 days of exportation.

(e) *Electronic Export Information.* Filing of Electronic Export Information (EEI) is not required for merchandise entered for transportation and exportation, provided the merchandise has not been entered for consumption or warehousing, or admitted into an FTZ. If the merchandise requires an export license, the merchandise is subject to the filing requirements of the licensing Federal agency. See 15 CFR part 30, subpart A.

(f) *Time to export.* Any portion of an in-bond shipment entered for transportation and exportation must be exported within 15 calendar days from the date of arrival of the last portion of the shipment at the port of exportation, unless an extension has been granted by CBP pursuant to § 18.24. On the 16th day, the merchandise will become

subject to general order requirements under § 4.37, § 122.50, or § 123.10 of this chapter, as applicable.

(g) *Notice of arrival and proof of exportation.* Arrival must be reported within two business days after the arrival at the port of exportation, in accordance with § 18.1. Within two business days after exportation, the in-bond record must be updated via a CBP approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter.

§ 18.21 [Reserved].

§ 18.22 Procedure at port of exportation.

(a) *Transfer of bonded merchandise to another conveyance.* If in-bond merchandise must be transferred to another conveyance at the port of exportation, the procedure will be as prescribed in §§ 18.3 and 18.4(c).

(b) *Transfer of baggage by express shipment.* An express consignment carrier that is bonded as a common carrier and is responsible under its bond for delivery to the CBP officer in charge of the exporting conveyance of articles shown to be baggage in the in-bond record may transfer the baggage by express shipment without a permit from the port director and without the use of a transfer ticket or other CBP formality from its terminal to the exporting conveyance for lading under CBP supervision. The in-bond record must be updated to reflect the name of the owner of the baggage or article and the name of the conveyance transporting the owner of the baggage. See § 18.1.

§ 18.23 Change of port of exportation or first foreign port; change of entry.

(a) *Change of port of exportation or first foreign port.* The carrier or any of the parties provided for in § 18.1(c) must notify CBP of a change of the port of exportation or first foreign port that was provided in the original in-bond application by updating the in-bond record via a CBP-approved EDI system within two business days of learning of the change in accordance with § 18.1(h).

(b) *Change of entry.* Merchandise received at the anticipated port of exportation may, in lieu of export, be admitted into an FTZ, entered for consumption, warehouse, or any other form of entry, and is subject to all the conditions pertaining to merchandise entered at a port of first arrival.

§ 18.24 Retention of goods within port limits; dividing of shipments.

(a) *Retention of goods within port limits.* Upon receipt of a written request by the carrier or any of the parties provided for in § 18.1(c), the port director, in his or her discretion, may allow in-transit merchandise, including merchandise covered by a (TIR) carnet, to remain within the port limits of the port of exportation under CBP supervision without extra expense to the Government for a period not exceeding 90 days. Upon obtaining CBP approval, the carrier or any of the parties provided for in § 18.1(c) must submit an immediate exportation in-bond application pursuant to §§ 18.1 and 18.25 of this chapter. Upon further requests, additional extensions of 90 days or less may be granted by the port director, but the merchandise may not remain in the port limits for more than one year from the date of arrival of the importing conveyance at the port of first arrival. Any merchandise that remains in the port limits without authorization is subject to general order requirements under § 4.37, § 122.50, or § 123.10 of this chapter, as applicable.

(b) *Divided shipments at the port of exportation.* The dividing of an in-bond shipment after it has arrived at the port of exportation will be permitted when exportation in its entirety is not possible by reason of the different destinations to which portions of the shipment are destined, when the exporting vessel cannot properly accommodate the entire quantity, or in similar circumstances. The carrier or any of the parties named in § 18.1(c) must update the in-bond record with the new information regarding the divided shipment within two business days of the dividing of the shipment. In the case, however, of merchandise being transported under cover of a carnet, the dividing of a shipment is not permitted.

Subpart E—Immediate Exportation

§ 18.25 Direct exportation.

(a) *Merchandise—(1) General.* Except for exportations by mail as provided for in subpart F of part 145 of this chapter (see also § 158.45 of this chapter), an in-bond application must be transmitted as provided under § 18.1, for the following merchandise when it is to be directly exported without transportation to another port:

- (i) Merchandise in CBP custody for which no entry has been made or completed;
- (ii) Merchandise covered by an unliquidated consumption entry; or
- (iii) Merchandise that has been entered in good faith but is found to be

prohibited under any law of the United States.

(2) *Carnets.* If a TIR carnet covers the merchandise that is to be exported directly without transportation, the carnet will be discharged or canceled, as appropriate (see part 114 of this chapter), and an in-bond application must be transmitted, as provided by this part. If an A.T.A. carnet covers the merchandise that is to be exported directly without transportation, the carnet must be discharged by the certification of the appropriate transportation and reexportation vouchers by CBP officers as necessary.

(b) *Restriction on immediate exportation by truck.* Trucks arriving at a U.S. port of entry, carrying shipments for which an immediate exportation entry is presented as the sole means of entry, may be denied authorization to proceed. The port director may require the truck to return to the country from which it came or may allow the filing of a new entry.

(c) *Time to export.* Any portion of an in-bond shipment entered for immediate exportation pursuant to an in-bond entry must be exported within 15 calendar days from the date of arrival at the port of exportation, unless an extension has been granted by CBP pursuant to § 18.24(a). On the 16th day, the merchandise will become subject to general order requirements under §§ 4.37, 122.50, or 123.10 of this chapter, as applicable.

(d) *Electronic Export Information.* Filing of Electronic Export Information (EEI) is not required for merchandise entered under an Immediate Exportation entry provided that the merchandise has not been entered for consumption, for warehousing, or admitted to a FTZ. If the merchandise requires an export license, the merchandise is subject to the filing requirements of the licensing Federal agency. See 15 CFR part 30, subpart A.

(e) *Exportation without landing, vessels.* If the merchandise is exported on the arriving vessel without landing, a representative of the vessel who has knowledge of the facts must certify that the merchandise entered for exportation was not discharged during the vessel's stay in port. A charge will be made against the continuous bond on CBP Form 301, containing the bond conditions set forth in § 113.64 of this chapter, if on file. If a continuous bond is not on file, a single entry bond containing the bond conditions set forth in § 113.64 will be required. If the merchandise is covered by a TIR carnet, the carnet must not be taken on charge (see § 114.22(c)(2) of this chapter).

(f) *Notice and proof of exportation.* Within two business days after exportation of merchandise described in paragraph (a) of this section, the in-bond record must be updated via a CBP-approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter within 30 days of exportation.

(g) *Explosives.* Gunpowder and other explosive substances, the deposit of which in any public store or bonded warehouse is prohibited by law, may be entered on arrival from a foreign port for immediate exportation in-bond by sea, but must be transferred directly from the importing to the exporting vessel.

(h) *Transfer by express shipment.* The transfer of articles by express shipment must be in accordance with the procedures set forth in § 18.22.

§ 18.26 Indirect exportation.

(a) *Indirect exportation, vessels.* Merchandise that had been intended to be exported without landing from an importing vessel in accordance with § 18.25(e) may instead be transported in-bond to another port for exportation and entered for transportation and exportation in accordance with the procedure in § 18.20, upon the transmission of an in-bond application to CBP pursuant to § 18.1, via a CBP-approved EDI system. Upon acceptance of the entry by CBP and acceptance of the merchandise by the bonded carrier, the bonded carrier assumes liability for the transportation and exportation of the merchandise. If the merchandise was prohibited entry by any Government agency, that fact must be noted in the in-bond application.

(b) *Carnets.* If merchandise to be transported in-bond to another port for exportation was imported under cover of a TIR carnet, the carnet must be discharged or canceled at the port of importation and the merchandise transported under an electronic in-bond application (see § 18.20). If merchandise to be transported in-bond to another port for exportation was imported under cover of an A.T.A. carnet, the appropriate transit voucher will be accepted in lieu of an electronic in-bond application. One transit voucher will be certified by CBP officers at the port of importation and a second transit voucher, together with the reexportation voucher, will be certified at the port of exportation.

(c) *Transfer at selected port of exportation.* If the merchandise is to be transferred to another conveyance after

arrival at the port selected for exportation pursuant to paragraph (a) of this section, the procedure prescribed in § 18.4(c) will be followed. The provisions of §§ 18.23 and 18.24 will also be followed in applicable cases.

(d) *Time to export.* Any portion of an in-bond shipment entered for indirect exportation following an in-bond entry must be exported within 15 calendar days from the date of arrival at the port of exportation, unless an extension has been granted by CBP pursuant to § 18.24(a). On the 16th day, the merchandise will become subject to general order requirements under § 4.37, § 122.50, or § 123.10 of this chapter, as applicable.

(e) *Notice and proof of exportation.* Within two business days after exportation, the in-bond record must be updated via a CBP-approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter within 30 days of exportation.

§ 18.27 Port marks.

Port marks may be added by authority of the port director and under the supervision of a CBP officer. The original marks and the port marks must appear in all documentation or the electronic equivalent must appear in electronic records pertaining to the exportation.

Subpart F—Merchandise Transported by Pipeline

§ 18.31 Pipeline transportation of bonded merchandise.

(a) *General procedures—(1) Applicability.* Merchandise may be transported by pipeline under the procedures in this part, as appropriate, and unless otherwise specifically provided for in this section.

(2) *In-bond application.* For purposes of this section, the in-bond application will be made by submitting a CBP Form 7512 or by electronic submission via a CBP-approved EDI system.

(b) *Bill of lading to account for merchandise.* Unless CBP has reasonable cause to suspect fraud, CBP will accept a bill of lading or equivalent document of receipt issued by the pipeline operator to the shipper and accepted by the consignee to account for the quantity of merchandise transported by pipeline and to maintain the identity of the merchandise.

(c) *Procedures when pipeline is only carrier.* When a pipeline is the only carrier of the in-bond merchandise and

there is no transfer to another carrier, the bill of lading or equivalent document of receipt issued by the pipeline operator to the shipper must be submitted with the in-bond application. If there are no discrepancies between the bill of lading or equivalent document of receipt and the in-bond application for the merchandise, and provided that CBP has no reasonable cause to suspect fraud, the bill of lading or equivalent document of receipt will be accepted by CBP as establishing the quantity and identity of the merchandise transported. The pipeline operator is responsible for any discrepancies, including shortages, irregular deliveries, or nondeliveries at the port of destination or exportation (see § 18.8).

(d) *Procedures when there is more than one carrier (i.e., transfer of the merchandise)—(1) Pipeline as initial carrier.* When a pipeline is the initial carrier of merchandise to be transported in-bond and the merchandise is transferred to another conveyance (either a different mode of transportation or a pipeline operated by another operator), the procedures for transfers in § 18.3 and paragraph (c) of this section must be followed, except that—

(i) When the merchandise is to be transferred to one conveyance, a copy of the bill of lading or equivalent document issued by the pipeline operator to the shipper must be delivered to the person in charge of the conveyance for transmission to CBP; or

(ii) When the merchandise is to be transferred to more than one conveyance, a copy of the bill of lading or equivalent document issued by the pipeline operator to the shipper must be delivered to the person in charge of each additional conveyance, for transmission to CBP.

(2) *Transfer to pipeline from initial carrier other than a pipeline.* When merchandise initially transported in-bond by a carrier other than a pipeline is transferred to a pipeline, the procedures in § 18.3 and paragraph (c) of this section must be followed, except that the bill of lading or other equivalent document of receipt issued by the pipeline operator to the shipper must be transmitted to CBP.

(3) *Initial carrier liable for discrepancies.* In the case of either paragraph (d)(1) or (2) of this section, the initial carrier will be responsible for any discrepancies, including shortages, irregular deliveries, or nondeliveries, at the port of destination or failure to export at the port of exportation (see generally § 18.8).

(e) *Recordkeeping.* The shipper, pipeline operator, and consignee are subject to the recordkeeping requirements in 19 U.S.C. 1508 and 1509, as provided for in part 163 of this chapter.

Subpart G—Merchandise Not Otherwise Subject to CBP Control Exported Under Cover of a TIR Carnet

§ 18.41 Applicability.

The provisions of §§ 18.41 through 18.45 apply only to merchandise to be exported under cover of a TIR carnet for the convenience of the U.S. exporter or other party in interest and do not apply to merchandise otherwise required to be transported in bond under the provisions of this chapter. Merchandise to be exported under cover of a TIR carnet for the convenience of the U.S. exporter or other party in interest may be transported with the use of the facilities of either bonded or non-bonded carriers.

§ 18.42 Direct exportation.

At the port of exportation, the container or road vehicle, the merchandise, and the TIR carnet shall be made available to the port director. Any required Electronic Export Information (EEI) shall be filed in accordance with the applicable regulations of the Bureau of the Census (15 CFR part 30). The port director shall examine the merchandise to the extent he believes necessary to determine that the carnet has been properly completed and shall verify that the container or road vehicle has the necessary certificate of approval or approval plate intact and is in satisfactory condition. After completion of any required examination and supervision of loading, the port director will seal the container or road vehicle with customs seals and ascertain that the TIR plates are properly affixed and sealed. See § 18.4(d). In the case of heavy or bulky goods moving under cover of a TIR carnet, the port director shall cause a customs seal or label, as appropriate, to be affixed. He shall also remove two vouchers from the carnet, execute the appropriate counterfoils, and return the carnet to the carrier or agent to accompany the merchandise.

§ 18.43 Indirect exportation.

(a) *Filing of Electronic Export Information.* When merchandise is to move from one U.S. port to another for actual exportation at the second port, any Electronic Export Information (EEI) required to be validated shall be filed in accordance with the procedures described in the applicable regulations

of the Bureau of the Census (15 CFR part 30).

(b) *Origination port procedure.* The port director shall follow the procedure provided in § 18.42 in respect to examination of the merchandise, supervision of loading, sealing or labeling, and affixing of TIR plates. The port director will remove one voucher from the carnet, execute the appropriate counterfoil, and return the carnet to the carrier or agent to accompany the container or road vehicle to the port of actual exportation.

(c) *Port of exportation procedure.* At the port of actual exportation, the carnet and the container (or heavy or bulky goods) or road vehicle shall be presented to the port director who shall verify that seals or labels are intact and that there is no evidence of tampering. After verification, the port director shall remove the appropriate voucher from the carnet, execute the counterfoil, and return the carnet to the carrier or agent.

§ 18.44 Abandonment of exportation.

In the event that exportation is abandoned at any time after merchandise has been placed under cover of a TIR carnet, the carrier or agent shall deliver the carnet to the nearest CBP office or to the CBP office at the origination port for cancellation (see § 114.26(c) of this chapter). When the carnet has been canceled, the carrier or agent may remove customs seals or labels and unload the container (or heavy or bulky goods) or road vehicle without customs supervision.

§ 18.45 Supervision of exportation.

The provisions of §§ 18.41 through 18.44 do not require the director of the port of actual exportation to verify that merchandise moving under cover of a TIR carnet is loaded on board the exporting carrier.

Subpart H—Importer Security Filings

§ 18.46 Changes to Importer Security Filing information.

For merchandise transported in bond, which at the time of transmission of the Importer Security Filing as required by § 149.2 of this chapter is intended to be entered as an immediate exportation (IE) or transportation and exportation (T&E) shipment, permission from the port director of the origination port is needed to change the in-bond entry into a consumption entry. Such permission will only be granted upon receipt by CBP of a complete Importer Security Filing as required by part 149 of this chapter.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

■ 10. The general authority for part 19 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624.

* * * * *

■ 11. In § 19.15, revise paragraphs (f) and (g)(1) to read as follows:

§ 19.15 Withdrawal for exportation of articles manufactured in bond; waste or byproducts for consumption.

* * * * *

(f) The general procedure covering warehouse withdrawals for exportation must be followed in the case of articles withdrawn for exportation from a bonded manufacturing warehouse.

(g)(1) Articles may be withdrawn for transportation and delivery to a bonded storage warehouse at an exterior port under the provisions of section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), for the sole purpose of immediate exportation, except for distilled spirits which may be withdrawn under the provisions of § 311 for transportation and delivery to any bonded storage warehouse for the sole purpose of immediate exportation or may be withdrawn pursuant to section 309(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1309(a)). To make a withdrawal an in-bond application must be filed (see part 18 of this chapter), as provided for in § 144.36 of this chapter. A rewarehouse entry shall be made in accordance with § 144.34(b) of this chapter, supported by a bond on CBP Form 301, containing the bond conditions set forth in § 113.63 of this chapter.

* * * * *

PART 113—CBP BONDS

■ 12. The general authority for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

■ 13. In § 113.63, revise paragraph (c)(1) to read as follows:

§ 113.63 Basic custodial bond conditions.

* * * * *

(c) * * *

(1) If a bonded carrier, to report in-bond arrivals and exportations in the manner and in the time prescribed by regulation and to export in-bond merchandise in the time periods prescribed by regulation.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

14. The general authority for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

■ 15. In § 122.92, revise paragraph (g) to read as follows:

§ 122.92 Procedure at port of origin.

(g) *Warning labels.* The carrier shall supply and attach the warning label, as described in § 18.4(b)(3) of this chapter, to each bonded package.

■ 16. In § 122.118, revise paragraph (b) to read as follows:

§ 122.118 Exportation from port of arrival.

(b) *Time.* Transit air cargo must be exported from the port of arrival within 15 days from the date the exporting airline receives the cargo. After the 15-day period, the individual cargo shipments must be made the subject of individual entries, as appropriate.

■ 17. In § 122.119, revise paragraph (b) to read as follows:

§ 122.119 Transportation to another U.S. port.

(b) *Time.* Transit air cargo traveling to a final port of destination in the U.S. shall be delivered to Customs at its destination within 30 days from the date the receiving airline gives the receipt for the cargo at the port of arrival.

■ 18. In § 122.120, revise paragraphs (c) and (k) to read as follows:

§ 122.120 Transportation to another port for exportation.

(c) *Time.* Transit air cargo covered by this section shall be delivered to CBP at the port of exportation within 30 days from the date of receipt by the forwarding airline.

(k) *Failure to deliver.* If all or part of the cargo listed on the transit air cargo manifest is not accounted for with an exportation copy within 45 days, the director of the port of arrival shall take action as provided in § 122.119(d).

PART 123—CBP RELATIONS WITH CANADA AND MEXICO

■ 19. The general authority for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the

United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

■ 20. In § 123.31, revise paragraph (b) to read as follows:

§ 123.31 Merchandise in transit.

(b) *From one point in a contiguous country to another through the United States.* Merchandise may be transported from point to point in Canada or in Mexico through the United States in bond in accordance with the procedures set forth in §§ 18.1 and 18.20 through 18.24 of this chapter except where those procedures are modified by this subpart or subparts E for trucks transiting the United States, F for commercial traveler's samples, or G for baggage.

■ 21. Revise § 123.32 to read as follows:

§ 123.32 In-bond application.

An in-bond application must be submitted pursuant to part 18 of this chapter upon arrival of merchandise which is to proceed under the provisions of this subpart.

§ 123.34 [Removed and Reserved].

■ 22. Remove and reserve § 123.34.
 ■ 23. In § 123.42, revise the paragraph (c) heading and paragraphs (c)(1) and (d) introductory text, to read as follows:

§ 123.42 Truck shipments transiting the United States.

(c) *Procedure at U.S. port of arrival—*
 (1) *Filing of in-bond application.* An in-bond application must be filed pursuant to § 18.1 of this chapter prior to or upon arrival at a U.S. port. At CBP's discretion the driver may be required to present four validated copies of the United States-Canada Transit Manifest, CBP Form 7512-B Canada 8½, to the CBP officer, who will review the manifest for accuracy and verify its validation by Canadian Customs. If the manifest is found not to be validated properly, the truck will be required to be returned to the Canadian port of departure so that the manifest may be validated in accordance with Canadian Customs regulations. If the manifest is validated properly and no irregularity is found, the truck will be sealed unless sealing is waived by CBP. The CBP officer will note in the in-bond record and, if paper, on the manifest, the seal numbers or the waiver of sealing, retain the original, and return three copies of the manifest to the driver for presentation to CBP at the U.S. port of exportation.

(d) *Procedure at U.S. port of exportation.* The arrival of the in-bond

shipment at the port of exportation must be reported to CBP in accordance with § 18.1 of this chapter.

■ 24. In § 123.52, revise paragraph (a) to read as follows:

§ 123.52 Commercial samples transported by automobile through the United States between ports in Canada.

(a) *General provisions.* A commercial traveler arriving from Canada may be permitted to transport effectively corded and sealed samples in his automobile without further sealing in the United States, upon compliance with this section and subject to the conditions of § 18.20(d) of this chapter, since customs bonded carriers as described in § 18.2 of this chapter are not considered to be reasonably available. Samples having a total value of not more than \$200 may be carried by a nonresident commercial traveler through the United States without cording and sealing and without an in-transit manifest in accordance with § 148.41 of this chapter.

■ 25. In § 123.64, revise paragraph (a) to read as follows:

§ 123.64 Baggage in transit through the United States between ports in Canada or in Mexico.

(a) *Procedure.* Baggage in transit from point to point in Canada or Mexico through the United States may be transported in-bond through the United States in accordance with the procedures set forth in §§ 18.1, 18.13, 18.14, and 18.20 through 18.24 of this chapter except where those procedures are modified by this section.

PART 141—ENTRY OF MERCHANDISE

■ 26. The general authority for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1414, 1448, 1484, 1624.

■ 27. In § 141.61, revise paragraph (e)(1)(i)(A) to read as follows:

§ 141.61 Completion of entry and entry summary documentation.

(e) *Statistical information—*(1) *Information required on entry summary or withdrawal form—*(i) *Where form provides space—*(A) *Single invoice.* For each class or kind of merchandise subject to a separate statistical reporting number, the applicable information required by the General Statistical Notes, Harmonized Tariff Schedule of the United States (HTSUS), must be shown on the entry summary, CBP Form

7501. The applicable information must also be shown on the in-bond application filed pursuant to part 18 of this chapter when it is used to document an incoming vessel shipment proceeding to a third country pursuant to an entry for transportation and exportation, or immediate exportation.
* * * *

PART 142—ENTRY PROCESS

■ 28. The general authority for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

■ 29. In § 142.18, revise paragraphs (a)(1) and (2) to read as follows:

§ 142.18 Entry summary not required for prohibited merchandise.

(a) * * *

(1) An entry for exportation filed using an in-bond application pursuant to part 18 of this chapter, or an application to destroy the merchandise under CBP supervision is made within 10 days after the time of entry, and the exportation or destruction is accomplished promptly, or

(2) An entry for transportation and exportation, filed using an in-bond application pursuant to part 18 of this chapter, is made within 10 days after the time of entry and domestic carriage of the merchandise does not conflict with the requirements of another Federal agency.
* * * *

■ 30. In § 142.28, revise paragraph (a)(2) to read as follows:

§ 142.28 Withdrawal or entry summary not required for prohibited merchandise.

(a) * * *

(2) An entry for exportation or for transportation and exportation filed using an in-bond application pursuant to part 18 of this chapter, or an application to destroy the merchandise, is made within the specified time limit, and the exportation or destruction is accomplished promptly.
* * * *

PART 143—SPECIAL ENTRY PROCEDURES

■ 31. The general authority for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1414, 1481, 1484, 1498, 1624, 1641.

■ 32. In § 143.1, revise paragraph (c) to read as follows:

§ 143.1 Eligibility.

* * * *

(c) *Participants for other purposes.* Upon approval by CBP, any party may

participate in ABI for other purposes, including transmission of protests, filing of in-bond applications, and applications for FTZ admission (CBP Form 214).

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

■ 33. The general authority for part 144 continues to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.
* * * *

■ 34. In § 144.22, revise paragraph (b) to read as follows:

§ 144.22 Endorsement of transfer on withdrawal form.

* * * *

(b) In-bond application filed pursuant to part 18 of this chapter, for merchandise to be withdrawn for transportation, exportation, or transportation and exportation.

■ 35. In § 144.36, revise paragraphs (c), (d) introductory text, (f), and (g)(4) to read as follows:

§ 144.36 Withdrawal for transportation.

* * * *

(c) *Form.* (1) A withdrawal for transportation shall be filed by submitting an in-bond application pursuant to part 18 of this chapter.

(2) Separate withdrawals for transportation from a single warehouse, via a single conveyance, consigned to the same consignee, and deposited into a single warehouse, can be filed using one in-bond application, under one control number, provided that the information for each withdrawal, as required in paragraph (d) of this section is provided in the in-bond application for certification by CBP. With the exception of alcohol and tobacco products, this procedure will not be allowed for merchandise that is in any way restricted (for example, quota/visa).

(3) The requirement that an in-bond application be filed and the information required in paragraph (d) of this section be shown will not be required if the merchandise qualifies under the exemption in § 144.34(c).

(d) *Information required.* In addition to the statement of quantity required by § 144.32, the following information for the merchandise being withdrawn must be provided in the in-bond application:
* * * *

(f) *Forwarding procedure.* The merchandise must be forwarded in accordance with the general provisions for transportation in bond (§§ 18.1 through 18.9 of this chapter). However, when the alternate procedures for

transfers between integrated bonded warehouses under § 144.34(c) are employed, the merchandise need not be delivered to a bonded carrier for transportation, and an entry for transportation and a rewarehouse entry will not be required.

(g) * * *

(4) Forwarded to another port or returned to the origination port in accordance with §§ 18.5(c) or 18.9 of this chapter;
* * * *

■ 36. In § 144.37, revise paragraphs (a) and (b) to read as follows:

§ 144.37 Withdrawal for exportation.

(a) *Form.* A withdrawal for either direct or indirect exportation must be filed by submitting an in-bond application pursuant to part 18 of this chapter or on CBP Form 7501 in 3 copies for merchandise being exported under cover of a TIR carnet. The in-bond application or CBP Form 7501 must contain all of the statistical information as provided in § 141.61(e) of this chapter. The port director may require an extra copy or copies of CBP Form 7501 for use in connection with the delivery of merchandise to the carrier.

(b) *Procedure for indirect exportation—(1) Forwarding.* Merchandise withdrawn for indirect exportation (transportation and exportation) must be forwarded to the port of exportation in accordance with the general provisions for transportation in bond (part 18 of this chapter).

(2) *Dividing of shipments.* The dividing up for exportation of shipments arriving under warehouse withdrawals for indirect exportation will be permitted only when various portions of a shipment are destined to different destinations, when the export vessel cannot properly accommodate the entire quantity, or in other similar circumstances. In the case of merchandise moving under cover of a TIR carnet, if the merchandise is not to be exported or if the shipment is to be divided, appropriate entry will be required and the carnet discharged. The provisions of §§ 18.23 and 18.24 of this chapter concerning change of destination or retention of merchandise on the dock must also be followed in applicable cases.
* * * *

PART 146—FOREIGN TRADE ZONES

■ 37. The general authority for part 146 continues to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

■ 38. In § 146.62, revise paragraphs (a) and (b)(2) to read as follows:

§ 146.62 Entry.

(a) *General.* Entry for foreign merchandise that is to be transferred from a zone, or removed from a zone for exportation or transportation to another port, for consumption or warehouse, will be made by filing an in-bond application pursuant to part 18 of this chapter, CBP Form 3461, CBP Form 7501, or other applicable CBP forms. If entry is made on CBP Form 3461, the person making entry shall file an entry summary for all the merchandise covered by the CBP Form 3461 within 10 business days after the time of entry.

(b) * * *

(2) An in-bond application for merchandise to be transferred to another port or zone or for exportation must provide that the merchandise covered is foreign trade zone merchandise; give the number of the zone from which the merchandise was transferred; state the status of the merchandise; and, if applicable, bear the notation or endorsement provided for in § 146.64(c), § 146.66(b), or § 146.70(c).

* * * * *

■ 39. In § 146.66, revise paragraphs (a) and (b) and remove the words “Customs Form” and add in their place the words “CBP Form” wherever they appear in paragraphs (c)(1) and (2) and (d).

The revisions read as follows:

§ 146.66 Transfer of merchandise from one zone to another.

(a) *At the same port.* A transfer of merchandise to another zone with a different operator at the same port (including a consolidated port) must be made by a licensed cartman or a bonded carrier as provided for in § 112.2(b) of this chapter or by the operator of the zone for which the merchandise is destined under an entry for immediate transportation filed via an in-bond application pursuant to part 18 of this chapter or other appropriate form with a CBP Form 214 filed at the destination zone. A transfer of merchandise between zone sites at the same port having the same operator may be made under a permit on CBP Form 6043 or under a local control system approved by the port director wherein any loss of merchandise between sites will be treated as if the loss occurred in the zone.

(b) *At a different port.* A transfer of merchandise from a zone at one port of entry to a zone at another port must be made by bonded carrier under an entry for immediate transportation filed via an in-bond application pursuant to part 18 of this chapter. All copies of the entry

must bear a notation that the merchandise is being transferred to another zone designated by its number.

* * * * *

■ 40. In § 146.67, revise paragraphs (b) and (c) to read as follows:

§ 146.67 Transfer of merchandise for exportation.

* * * * *

(b) *Immediate exportation.* Each transfer of merchandise to the customs territory for exportation at the port where the zone is located will be made under an entry for immediate exportation filed in an in-bond application pursuant to part 18 of this chapter. The person making entry must furnish an export bond on CBP Form 301 containing the bond conditions provided for in § 113.63 of this chapter.

(c) *Transportation and exportation.* Each transfer of merchandise to the customs territory for transportation to and exportation from a different port will be made under an entry for transportation and exportation in an in-bond application pursuant to part 18 of this chapter. The bonded carrier will be responsible for exportation of the merchandise in accordance with § 18.26 of this chapter.

* * * * *

■ 41. Revise § 146.68 to read as follows:

§ 146.68 Transfer for transportation or exportation; estimated production.

(a) *Weekly permit.* The port director may allow the person making entry for merchandise provided for in § 146.63(c) to file an application for a weekly permit to enter and release merchandise during a calendar week for exportation, transportation, or transportation and exportation. The application will be made by filing an in-bond application pursuant to part 18 of this chapter. The in-bond application must provide invoice or schedule information like that required in § 146.63(c)(1). If actual transfers will exceed the estimate for the week, the person with the right to make entry must file a supplemental in-bond application to cover the additional merchandise to be transferred from the subzone or zone site. No merchandise covered by the weekly permit may be transferred from the zone before approval of the application by the port director.

(b) *Individual entries.* After approval of the application for a weekly permit by the port director, the person making entry will be authorized to file individual in-bond applications for exportation, transportation, or transportation and exportation of the merchandise covered by permit. Upon

transfer of the merchandise, the carrier must update the in-bond record via a CBP-approved EDI system to ensure its assumption of liability under the carrier’s or cartman’s bond. CBP will consider the time of entry to be when the removing carrier updates the in-bond record.

(c) *Statement of merchandise entered.*

The person making entry for merchandise under an approved weekly permit must file with the port director, by the close of business on the second business day of the week following the week designated on the permit, a statement of the merchandise entered under that permit. The statement must list each in-bond application by its unique IT number, and must provide a reconciliation of the quantities on the weekly permit with the manifested quantities on the individual in-bond applications submitted to CBP, as well as an explanation of any discrepancy.

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

■ 42. The general authority for part 151 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i) and (j), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

■ 43. Revise § 151.9 to read as follows:

§ 151.9 Immediate transportation entry delivered outside port limits.

When merchandise covered by an immediate transportation entry has been authorized by the port director to be delivered to a place outside a port of entry as provided for in § 18.11(a) of this chapter, the provisions of § 151.7 must be complied with to the same extent as if the merchandise had been delivered to the port of entry, and then authorized to be examined elsewhere than at the public stores, wharf, or other place under the control of CBP.

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

■ 44. The general authority for part 181 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314.

* * * * *

§ 181.47 [Amended].

■ 45. In § 181.47, amend paragraph (b)(2)(ii)(E) by removing the words “CBP 7512” and adding in their place the

words “In-bond application submitted pursuant to part 18 of this chapter”.

Kevin K. McAleenan,
Acting Commissioner.

Approved: September 20, 2017.

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.

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Part III

The President

Memorandum of September 8, 2017—Delegation of Authority Under the Global Magnitsky Human Rights Accountability Act
Presidential Determination No. 2017–12 of September 13, 2017—
Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2018

Presidential Documents

Title 3—**Memorandum of September 8, 2017****The President****Delegation of Authority Under the Global Magnitsky Human Rights Accountability Act****Memorandum for the Secretary of State [and] the Secretary of the Treasury**

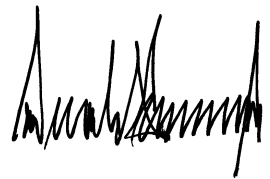
By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby make the following delegations:

I delegate to the Secretary of the Treasury the authority to administer financial sanctions under section 1263 of the Global Magnitsky Human Rights Accountability Act (Public Law 114–328) (the “Act”). In exercising the authority delegated by this memorandum, the Secretary of the Treasury will coordinate with the Secretary of State.

I also delegate to the Secretary of State the authority to administer visa sanctions under section 1263 of the Act.

The delegations in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as section 1263 of the Act.

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 8, 2017

Presidential Documents

Presidential Determination No. 2017–12 of September 13, 2017

Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2018

Memorandum for the Secretary of State

Pursuant to section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228) (FRAA), I hereby identify the following countries as major drug transit and/or major illicit drug producing countries: Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela.

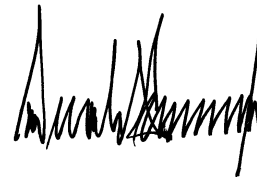
A country's presence on the foregoing list is not necessarily a reflection of its government's counternarcotics efforts or level of cooperation with the United States. Consistent with the statutory definition of a major drug transit or drug producing country set forth in section 481(e)(2) and (5) of the Foreign Assistance Act of 1961, as amended (FAA), the reason major drug transit or illicit drug producing countries are placed on the list is the combination of geographic, commercial, and economic factors that allow drugs to transit or be produced, even if a government has carried out the most assiduous narcotics control law enforcement measures.

Pursuant to section 706(2)(A) of the FRAA, I hereby designate Bolivia and Venezuela as countries that have failed demonstrably during the previous 12 months to adhere to their obligations under international counternarcotics agreements, and to take the measures required by section 489(a)(1) of the FAA. Included with this determination are justifications for the designations of Bolivia and Venezuela, as required by section 706(2)(B) of the FRAA.

In addition, the United States Government seriously considered designating Colombia as a country that has failed demonstrably to adhere to its obligations under international counternarcotics agreements due to the extraordinary growth of coca cultivation and cocaine production over the past 3 years, including record cultivation during the last 12 months. Ultimately, Colombia is not designated because the Colombian National Police and Armed Forces are close law enforcement and security partners of the United States in the Western Hemisphere, they are improving interdiction efforts, and have restarted some eradication that they had significantly curtailed beginning in 2013. I will, however, keep this designation under section 706(2)(A) of the FRAA as an option, and expect Colombia to make significant progress in reducing coca cultivation and production of cocaine.

I have also determined, in accordance with provisions of section 706(3)(A) of the FRAA, that support for programs to aid the people of Venezuela are vital to the national interests of the United States.

You are hereby authorized and directed to submit this designation, with its Bolivia and Venezuela memoranda of justification, under section 706 of the FRAA, to the Congress, and publish it in the *Federal Register*.

A handwritten signature in black ink, appearing to be the name of a high-ranking official, possibly a member of the administration.

THE WHITE HOUSE,
Washington, September 13, 2017

[FR Doc. 2017-21028
Filed 9-27-17; 11:15 am]
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FEDERAL REGISTER

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Part IV

The President

Memorandum of September 25, 2017—Increasing Access to High-Quality Science, Technology, Engineering, and Mathematics (STEM) Education

Presidential Documents

Title 3—

Memorandum of September 25, 2017

The President

Increasing Access to High-Quality Science, Technology, Engineering, and Mathematics (STEM) Education

Memorandum for the Secretary of Education

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby directed as follows:

Section 1. Policy. A key priority of my Administration is to better equip America's young people with the relevant knowledge and skills that will enable them to secure high-paying, stable jobs throughout their careers. With the growing role of technology in driving the American economy, many jobs increasingly require skills in science, technology, engineering, and mathematics (STEM)—including, in particular, Computer Science. These skills open the door to jobs, strengthening the backbone of American ingenuity, driving solutions to complex problems across industries, and improving lives around the world. As part of my Administration's commitment to supporting American workers and increasing economic growth and prosperity, it is critical that we educate and train our future workforce to compete and excel in lucrative and important STEM fields.

Today, too many of our Nation's K–12 and post-secondary students lack access to high-quality STEM education, and thus are at risk of being shut out from some of the most attractive job options in the growing United States economy. Courses in Computer Science are especially scarce in too many schools and communities, despite the job opportunities that these skills create. Nearly 40 percent of high schools do not offer physics and 60 percent of high schools do not offer computer programming. Of the nearly 17,000 high schools that were accredited to offer Advanced Placement exams in 2015, only 18 percent were accredited to teach Advanced Placement Computer Science (AP–CS). Minorities and students in rural communities often have even less access to Computer Science education. Nationwide, only 34 percent of African American students and 30 percent of rural high school students have access to a Computer Science class. Furthermore, even where classes are offered, there is a serious gender gap: less than a quarter of the students who took the AP–CS A exam nationally in 2016 were girls.

Shortages in high-quality STEM teachers at all levels, particularly in Computer Science, often drive these problems. The Department of Education, therefore, should prioritize helping districts recruit and train teachers capable of providing students with a rigorous education in STEM fields, focusing in particular on Computer Science. This will help equip students with the skills needed to obtain certifications and advanced degrees that ultimately lead to jobs in STEM fields.

Sec. 2. Expanding Access to Computer Science and STEM Education. (a) *Establish promotion of high-quality STEM education, with a particular focus on Computer Science, as a Department of Education priority.* The Secretary of Education (Secretary) shall, consistent with law, establish the promotion of high-quality STEM education, including Computer Science in particular, as one of the priorities of the Department of Education. The Secretary shall take this priority into account, to the extent permitted by law, when awarding grant funds in fiscal year 2018 and in future years.

(b) *Funding level.* The Secretary shall, to the extent consistent with law, establish a goal of devoting at least \$200 million in grant funds per year to the promotion of high-quality STEM education, including Computer Science in particular. Within 30 days of the Congress passing final appropriations for each fiscal year for which the priority established under subsection (a) of this section is in effect, the Secretary shall identify the grant programs to which the STEM priority will apply and estimate the total amount of such grant funds that will support high-quality STEM education, including Computer Science. The Secretary shall communicate plans for achieving this goal to the Director of the Office of Management and Budget (OMB Director) each fiscal year.

(c) *Explore administrative actions to promote Computer Science at the Department of Education.* The Secretary shall explore appropriate administrative actions, to the extent consistent with law, to add or increase focus on Computer Science in existing K–12 and post-secondary programs. As part of this effort, the Secretary shall identify and take action to provide guidance documents and other technical assistance that could support high-quality Computer Science education.

(d) *Report.* Not later than 90 days after the end of each fiscal year, the Secretary shall submit to the OMB Director a report on the activities carried out during the preceding fiscal year under subsections (b) and (c) of this section. In particular, the report shall describe how the grant funds referenced in subsection (b) were spent, any administrative actions that were taken, guidance documents that were released, or technical assistance that was provided pursuant to subsection (c) of this section, and whether these actions succeeded in promoting and expanding access to high-quality STEM education, including Computer Science in particular, both generally and with respect to underserved populations.

Sec. 3. Definition. The term “Computer Science” means the study of computers and algorithmic processes and includes the study of computing principles and theories, computer hardware, software design, coding, analytics, and computer applications.

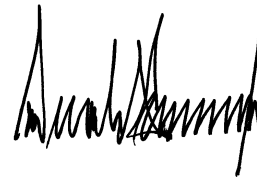
Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the OMB Director relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary is hereby authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be a stylized name, possibly "Donald Trump", written in a cursive style.

Reader Aids

Federal Register

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Thursday, September 28, 2017

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