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NATIONAL CAPITAL PLANNING COMMISSION

1 CFR Part 601

National Environmental Policy Act Regulations

AGENCY: National Capital Planning Commission.

ACTION: Final rule.

SUMMARY: The National Capital Planning Commission (NCPC or Commission) rescinds its current Environmental and Historic Preservation Policies and Procedures (2004 Policies) and hereby adopts new rules governing NCPC's implementation of the National Environmental Policy Act (NEPA).

DATES: This rule is effective October 30, 2017.

FOR FURTHER INFORMATION CONTACT: Anne R. Schuyler, (202) 482–7223 or *NEPA@ncpc.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Changes

A. Background

NCPC's 2004 Policies were adopted in 2004 (69 FR 41299, July 8, 2004) and generally remain appropriate. However certain portions of the 2004 Policies require revision to simplify, streamline, and improve the effectiveness of NCPC's process for complying with NEPA. Accordingly, this document adopts a complete new rule.

B. Elimination of Section 106 Procedures

One of the most significant changes reflected in the new rule is the elimination of procedures for complying with Section 106 of the National Historic Preservation Act (NHPA). In 2004, when it adopted the 2004 Policies, NCPC opted to issue combined NEPA and NHPA guidance to ensure coordinated implementation of both procedures. However, regulations promulgated by the Advisory Council on Historic Preservation (ACHP) do not require agencies to adopt agency specific processes and procedures (*see* 36 CFR chapter VIII). Instead ACHP regulations establish the processes and procedures all Federal Agencies must follow. This resulted in the inclusion of duplicative information in NCPC's 2004 Policies. While this information proved helpful, it diverted attention away from NCPC's agency-specific NEPA procedures mandated by the Council on Environmental Quality (CEQ). Accordingly, this rule does not include detailed references to the Section 106 consultation process. It does include a reference to coordination between NEPA and NHPA and consideration of historic resources in the NEPA process.

C. Federal and Non-Federal Agencies

To clarify roles and responsibilities, these Regulations distinguish between Federal Agency applicants and Non-Federal Agency applicants. Federal Agency applicants include cabinet level departments and executive agencies such as the U.S. General Services Administration (GSA). Non-Federal Agency applicants include, without limitation, the Smithsonian Institution, the John F. Kennedy Center for the Performing Arts, the National Gallery of Art, the U.S. Institute of Peace, the Government of the District of Columbia, the Maryland National Capital Park and Planning Commission (MNCPPC), and private parties and entities implementing projects on Federal land. NCPC's jurisdiction extends to Non-Federal Agency applicants when they undertake projects on federally-owned land. Under this rule, NCPC serves as the Lead Agency for Non-Federal Agency applications. This is necessitated by the fact the Non-Federal Agencies are not subject to NEPA. However, if the Commission takes an approval action on a Non-Federal Agency application, the requirements of NEPA apply to the Commission's decision-making process. This means NCPC must undertake the requisite steps of the NEPA process for a Non-Federal Agency application to meet its legal obligation.

D. Timing and Sequencing of Submission of NEPA Documents

These Regulations also alter the timing and sequencing of an applicant's submission of NEPA documentation for applications governed by the National Capital Planning Act and the Commemorative Works Act. Under the 2004 Policies, an applicant was required to complete the NEPA process at the time of preliminary review. Under this rule, an applicant must complete its NEPA process at the time of final review. This revised approach allows the Commission an opportunity to provide input on a project when it is still in the developmental phase. It also provides a NEPA sequencing consistent with Federal Agency project development schedules. This eliminates the pressure on Federal Agency applicants to expedite its NEPA process to meet NCPC's current sequencing requirements.

E. Categorical Exclusions

NCPC's rule also includes changes to the list of projects eligible for application of a Categorical Exclusion (CATEX). The Regulations include several new CATEXs. NCPC eliminated several existing CATEXs because they were based on old, antiquated authorities which have little to no relationship to NCPC's present day review roles. The rule also increase the number of extraordinary circumstances which negate the application of a CATEX.

II. Summary of and Response to Comments

A. General

NCPC published a Proposed Rule (82 FR 42570, May 30, 2017) addressing revisions to its 2004 Policies, establishing a 45-day public comment period. The public comment period closed on July 14, 2017.

NCPC received a little under 100 comments on its proposed NEPA rule Regulations. Comments were submitted by the General Services Administration, the U.S. Department of the Interior and it's National Park Service, and the National Aeronautics and Space Administration; the Smithsonian Institution; the Washington Area Metropolitan Transit Authority; the National Trust for Historic Preservation; The Committee of 100 on the Federal City; approximately 21 members of the general public; and two private consulting firms. A summary chart of all the comments received and NCPC's response thereto can be found on NCPC's Web site at *www.ncpc.gov/subnepa.*

The major comments can be grouped into six categories: (1) The elimination of detailed reference to compliance with Section 106 of the NHPA; (2) the treatment of Non-Federal Agencies in the Regulations; (3) the timing and sequencing of submitting NEPA Documents/Co-Signing a Finding of No Significant Impact (FONSI) or a Record of Decision (ROD); (4) NCPC's reliance on the CATEX of other government agencies; and (5) the minimal focus on public participation in the NEPA process/lack of public knowledge of process for administering CATEXs.

B. Revised Name for the Regulations

NCPC decided to rename its NEPA requirements the National Environmental Policy Act Regulations (Regulations). This title is more descriptive of the true nature of the Regulations versus the title of Environmental Policies and Procedures conferred on the 2004 Policies.

C. Elimination of NHPA Section 106 Requirements

Several comments addressed the elimination of NHPA Section 106 procedures from the Regulations. The National Trust for Historic Preservation generally agreed with the elimination, but it suggested designating the NEPA Lead and Cooperating Agencies as the Lead and Consulting Parties for the Section 106 process. NCPC disagrees with this suggestion. NCPC maintains it is inappropriate to designate roles for the Section 106 process in its NEPA Regulations. To compensate for the elimination, a member of the public suggested reference to ACHP guidance on the ACHP for integrating NEPA and the Section 106 processes. While NCPC found merit to this comment and initially inserted an endnote to the ACHP Web site and the CEQ Web site for general NEPA guidance, CEQ believed the references unnecessary. Finally, the Committee of 100 on the Federal City maintained the elimination of references to the Section 106 process sent a negative message about the connection between the two processes. NCPC notes this was not its intention as evidenced by the clearly articulated policy in § 601.2(d) to integrate the requirements of NEPA with, among others, the requirements of the NHPA.

D. Role of Non-Federal Agencies

The role of Non-Federal Agencies in the NEPA process generated a number of comments. The Smithsonian Institution (designated a Non-Federal Agency in the Regulations) recommended the re-designation of Federal and Non-Federal Agencies as Executive and Non-Executive Agencies on the theory that this might be less confusing. NCPC declined to make this change because of the repeated use of the term ''federal'' in the National Capital Planning Act (40 U.S.C. 8701 *et seq.*). However, for clarification purposes, NCPC revised the definition of Non-Federal Agencies to indicate this designation applies only for purposes of NEPA.

One member of the public challenged the legality of designating Non-Federal Agencies as ''Cooperating Agencies'' given that the CEQ regulatory definition only designates ''federal agencies'' as capable of serving in this capacity. NCPC notes this statement is only partially correct. The definition of Cooperating Agency in 40 CFR 1508.5 also extends to state or local agencies rendering such agencies eligible to serve as Cooperating Agencies. This makes Cooperating Agency status appropriate for the Government of the District of Columbia and the Maryland National Capital Park and Planning Commission. As to the others listed in the definition—Smithsonian Institution, the John F. Kennedy Center for the Performing Arts, the National Gallery of Art, the U.S. Institute of Peace, and private parties undertaking development on Federal land—NCPC agrees an alternative approach is necessary.

NCPC also agrees with the same individual's multiple comments that NCPC does not undertake NEPA ''on behalf'' of Non-Federal Agencies. NCPC recognizes that the NEPA obligation for a Non-Federal Agency application belongs to NCPC. NCPC believes a minor wording change to ''undertakes NEPA for a Non-Federal Agency application'' solves this concern.

Turning to an alternative approach for NEPA compliance for Non-Federal Agency applications, NCPC notes it is not alone in confronting the issue of Non-Federal Agency applications to which NEPA applies because of the Federal Agency's approval/permitting authority. NCPC looked at the NEPA regulations for similarly situated Federal Agencies to ascertain how they handle the issue. One Federal Agency lists in its regulations the information that the Non-Federal Agency (permittee and owner of the project) must submit to facilitate staff's preparation of the requisite NEPA document. Because this approach increased the complexity of the agency's regulations, and NCPC's goal is to streamline its regulations consistent with the Administration's articulated regulatory reduction goals, NCPC adopted a modified version of this approach.

NCPC will enter into a Memorandum of Agreement (MOA) (renamed from a Memorandum of Understanding or MOU in the proposed rule) with Non-Federal Agencies. The MOA will specify, among others, the information the Non-Federal Agency must submit to enable preparation of the requisite environmental document by NCPC staff and the timing of the information's submission. Contrary to the comments on one individual, NCPC disagrees the MOA approach is legally insufficient. This comment implies NCPC is relinquishing its NEPA responsibilities by entering into a MOA. This is not the case. NCPC considers the MOA an internal operating procedure within its authority to implement. It is also an efficient and effective way to fulfill its NEPA obligation and avoid some of the pitfalls associated with the prior approach of Cooperating Agency status. The problems avoided include budgetary issues if the Non-Federal Agency provides money to NCPC to retain a contractor, Non-Federal Agency participation in NCPC's retention of the Non-Federal Agency funded contractor, and the potential for two A&E contractors working on different aspects of the same project. To facilitate public awareness, NCPC will post the completed MOA on the NCPC's Web site.

NCPC notes that in a follow-up conversation with the commenter to explore the rationale for opposing an MOA, the commenter agreed the MOA approach as outlined above is legally sufficient. NCPC conducted the follow-up conversation after the comment period closed, and no new comments were discussed during the conversation.

E. Timing and Sequencing of Submitting NEPA Documents/Co-Signing FONSIs and RODs

All the government agencies supported NCPC's process change of moving NEPA completion to coincide with the Commission's final approval. There was one concern expressed about the sequencing of NEPA and the Commemorative Works Act's review process, but NCPC believes the comment was the result of a misunderstanding of the process.

Multiple Federal Agencies also advised against incorporation of a provision allowing NCPC to co-sign another agency's FONSI or ROD. NCPC notes that the Regulations render this practice discretionary. However, if both agencies agree on the contents of a FONSI or ROD, it makes no sense for NCPC to prepare a duplicated document for NCPC to sign. Obviously, if the two agencies have different reasons for

reaching a FONSI or a ROD, co-signature is not an option, and each agency will have to prepare its own document. Co-signature is also not an option if there is disagreement over the ability to reach a FONSI or ROD. This disagreement points to problems with the Environmental Document that must be resolved before the project can be presented to the Commission. Finally, NCPC reminds Federal Agencies that co-signing a FONSI or ROD is entirely consistent with the Administration's efforts to streamline regulatory processes especially NEPA.

F. Use of Another Agency's CATEX

The inclusion of five Categorical Exclusions that allowed NCPC to use the exclusion of another agency when it had no corresponding CATEX generated a number of comments pro and con. Federal Agencies supported the concept because it removed the possible need for them to prepare an EA if they used a Categorical Exclusions for their project but NCPC had no exclusion it could apply. The National Trust for Historic preservation and a member of the general public objected to the approach noting it was inconsistent with CEQ's long standing policy to disallow such an approach.

As required, NCPC submitted an administrative record to CEQ for all of its proposed CATEX, most of which are carry-overs from several iterations of prior regulations. The administrative record noted that the five CATEXs predicated upon use of another agency's exclusion had not been enlarged in scope and the CATEX continued to be appropriately limited by extraordinary circumstances, the number of which has been significantly increased in the Regulations.

NCPC's Administrative Record for the five CATEXs at issue was initially accepted, but upon further reflection CEQ has decided to adhere to its long standing policy to disallow such an approach. Consequently, NCPC has removed all five of the CATEXs at issue. Since four of the five CATEX at issue have been put to little use for a prolonged period of time, NCPC does not believe its implementation of NEPA will be unduly burdened by this removal. The addition of new CATEX may also fill the gap.

G. Public Participation/Public Knowledge of Process for Administering CATEX

The Committee of 100 on the Federal City commented on the silence of the proposed regulation on the goals, criteria and process for meaningful public participation. They encouraged the incorporation of meaningful public participation policy and goals to rectify this deficiency.

NCPC is fully committed to open government and transparency and believes its past actions amply substantiate this commitment not only in the NEPA and Section 106 processes but to all of its significant planning activities. Accordingly, the Regulations clearly articulate a policy of using the NEPA process to ''. . . foster meaningful public involvement in NCPC's decisions.'' Moreover, throughout the Regulations, there are repeated opportunities for public participation to include in the EIS scoping process with an option for NCPC to conduct a public scoping process for Environmental Assessments as well; in the review of draft Environmental Assessments (EAs) (at NCPC's option) and Environmental Impact Statements (EISs); and in the review of FONSIs and RODs. Moreover, at the suggestion of another commenter, documents required to be published in the **Federal Register** (Notice of Intent to Prepare an EIS and Notice of Availability of an EIS) will also be published on the NCPC Web site where parties interested in NCPC activities are more likely to go to stay abreast of current NCPC events.

The Committee of 100 on the Federal City also expressed concern about the Regulation's silence on the administrative process for the application of a CATEX. NCPC notes that among the Commission's official delegations is one conferring administrative responsibility for NEPA on the Executive Director. In the future, owing to the recent redesign of NCPC's Web site, the delegations will be listed on the Web site. However, NCPC notes this responsibility, how and when it is made, and how the public is notified of the decision is set forth in §§ 601.11(c) and 601.12(b) of the Regulations.

H. CEQ Comments

As required by CEQ Regulations, NCPC submitted a draft of this final rule to CEQ for its review and approval following revisions to the Regulations to reflect comments received during the public comment period. CEQ responded with a number of recommendations. Most of the recommendations were minor in nature and involved language clarifications, addition of cross-references to relevant sections of CEQ's regulations, and inclusion of additional language.

The one recommendation falling outside the minor category related to the timing of the signing FONSIs and RODs by Federal Agency applicants and NCPC for Non-Federal Agency applications. NCPC has in the past accepted signed FONSIs and RODs at the time an application for final approval is submitted to the Commission. This practice reflects the close coordination between NCPC and its applicants and the likelihood that the Commission, with rare exceptions, will approve the final application. CEQ (and one commenter) pointed out that notwithstanding the high probability the signed FONSI or ROD would reflect the Commission's decision, it was technically incorrect. The signature of a FONSI or ROD can only occur after the Commission takes a final action and cannot precede a future, anticipated decision of approval.

In response to CEQ's comment, the rule requires NCPC to sign its decision documents following Commission final approval of an application. As to Federal Agencies, the rule is silent as to when the Federal Agency may sign its FONSI or ROD. However, there is now an express provision that places the burden on Federal Agency applicants to review their Environmental Documents and their FONSI or ROD to determine if revisions are necessary if at the time of final approval the Commission disapproves an application and requires changes to the project.

Following incorporation of all of CEQ's recommended changes into the regulations, NCPC received final CEQ sign off on September 21, 2017.

III. Compliance With Laws and Executive Orders

Executive Orders 12866 and 13563

By Memorandum dated October 12, 1993 from Sally Katzen, Administrator, Office of Information and Regulatory Affairs (OIRA) to Heads of Executive Departments and Agencies, and Independent Agencies, OMB rendered the NCPC exempt from the requirements of Executive Order 12866 (See, Appendix A of cited Memorandum). Nonetheless, NCPC endeavors to adhere to the provisions of the Executive Order.

Executive Order 13771

NCPC is exempt from this Executive Order because it is exempt from E.O. 12866, NCPC confirmed this fact with OIRA.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the NCPC certifies that the rule will not have a significant economic effect on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It does not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs for individuals, various levels of governments or various regions; and does not have a significant adverse effect on completion, employment, investment, productivity, innovation or the competitiveness of U.S. enterprises with foreign enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.)

A statement regarding the Unfunded Mandates Reform Act is not required. The rule neither imposes an unfunded mandate of more than $100 million per year nor imposes a significant or unique effect on State, local or tribal governments or the private sector.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The rule does not substantially and directly affect the relationship between the Federal and state governments.

Civil Justice Reform (Executive Order 12988)

The General Counsel of NCPC has determined that the rule does not unduly burden the judicial system and meets the requirements of Executive Order 12988 3(a) and 3(b)(2).

Paperwork Reduction Act

The rule does not contain information collection requirements, and it does not require a submission to the Office of Management and Budget under the Paperwork Reduction Act.

National Environmental Policy Act

The rule is of an administrative nature, and its adoption does not constitute a major Federal action significantly affecting the quality of the human environment. NCPC's adoption of the rule will have minimal or no effect on the environment; impose no significant change to existing environmental conditions; and will have no cumulative environmental impacts.

Clarity of the Regulation

Executive Order 12866, Executive Order 12988, and the Presidential Memorandum of June 1, 1998 requires the NCPC to write all rules in plain language. NCPC maintains the rule meets this requirement.

Public Availability of Comments

Be advised that personal information such as name, address, phone number electronic address, or other identifying personal information contained in a comment may be made publically available. Individuals may ask NCPC to withhold the personal information in their comment, but there is no guarantee the agency can do so.

List of Subjects in 1 CFR Part 601

Environmental impact statements, Environmental protection.

■ For the reasons stated in the preamble, the National Capital Planning Commission adds 1 CFR part 601 to read as follows:

PART 601—IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

Subpart A—General

Sec.

Subpart B—Lead and Cooperating Agencies

Subpart C—NEPA Submission Schedules

Subpart D—Initiating the NEPA Process

Subpart E—Environmental Assessments

Subpart F—Environmental Impact Statements

Subpart G—Dispute Resolution

Authority: 40 CFR 1507.3.

Subpart A—General

§ 601.1 Purpose.

This part establishes rules that supplement the Council on Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) regulations that the National Capital Planning Commission (NCPC or Commission) and its applicants shall follow to ensure:

(a) Compliance with NEPA, as amended (42 U.S.C. 4321 *et seq.*) and CEQ regulations for implementing the procedural provisions of NEPA (40 CFR parts 1501 through 1508).

(b) Compliance with other laws, regulations, and Executive Orders identified by NCPC as applicable to a particular application.

§ 601.2 Policies.

Consistent with 40 CFR 1500.1 and 1500.2, it shall be the policy of the NCPC to:

(a) Comply with the procedures and policies of NEPA and other related laws, regulations, and orders applicable to Commission actions.

(b) Provide applicants sufficient guidance to ensure plans and projects comply with the rules of this part and other laws, regulations, and orders applicable to Commission actions.

(c) Integrate NEPA into its decision-making process at the earliest possible stage.

(d) Integrate the requirements of NEPA and other planning and environmental reviews required by law including, without limitation, the National Historic Preservation Act, 54 U.S.C. 306108 (NHPA), to ensure all such procedures run concurrently.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects on the quality of the human environment in the National Capital Region.

(f) Use all practicable means to protect, restore, and enhance the quality of the human environment including the built and socioeconomic environments and historic properties within the National Capital Region.

(g) Streamline the NEPA process and Environmental Impact Statements (EIS) to the maximum extent possible.

(h) Use the NEPA process to assure orderly and effective NCPC decision-making and to foster meaningful public involvement in NCPC's decisions.

§ 601.3 Definitions.

For purposes of this part, the following definitions shall apply:

Administrative Record means a compilation of all materials (written and electronic) that were before the agency at the time it made its final decision. An Administrative Record documents an agency's decision-making process and the basis for the decision.

Categorical Exclusion or *CATEX* means, as defined by 40 CFR 1508.4, a category of actions which do not individually or cumulatively have a significant effect on the human environment except under Extraordinary Circumstances and which have been found to have no such effect in procedures adopted by a Federal Agency (NCPC) in implementation of CEQ's regulations and for which, therefore, neither an Environmental Assessment (EA) nor an EIS is required.

Central Area means the geographic area in the District of Columbia comprised of the Shaw School and Downtown Urban Renewal Areas or such other area as the District of Columbia and NCPC shall subsequently jointly determine.

Chairman means the Chairman of the National Capital Planning Commission appointed by the President, pursuant to 40 U.S.C. 8711(c).

Commemorative Works Act or *CWA* means the Federal law codified at 40 U.S.C. 8901 *et seq.* that sets forth the requirements for the location and development of new memorials and monuments on land under the jurisdiction of the National Park Service (NPS) or the General Services Administration (GSA) in the District of Columbia and its Environs.

Commission means the National Capital Planning Commission created by 40 U.S.C. 8711.

Comprehensive Plan means The Comprehensive Plan for the National Capital: Federal Elements prepared and adopted by the Commission pursuant to 40 U.S.C. 8721(a).

Cooperating Agency means, as defined in 40 CFR 1508.5, any Federal Agency other than a Lead Agency that has jurisdiction by law or special expertise with respect to a proposal (or reasonable alternative) for legislation or other major action significantly affecting the quality of the human environment; a state or local agency of similar qualifications; or when the effects are on a reservation, an Indian Tribe when agreed to by the Lead Agency.

Cumulative impact means, as defined in 40 CFR 1508.7, the impact on the environment that results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or Non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor, but collectively significant, actions taking place over a period of time.

Emergency Circumstances means a sudden and serious occurrence or situation requiring immediate attention to protect the lives and safety of the public and protect property and ecological resources and functions from imminent harm.

Environmental Assessment or *EA* means, as defined in 40 CFR 1508.9, a concise document for which a Federal Agency is responsible that serves to briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI; aid an agency's compliance with NEPA when no EIS is necessary; facilitate preparation of an EIS when one is necessary; and includes a brief discussion of the need for the proposal, alternatives as required by section 102(2)(E) of NEPA, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Environmental Document means, as set forth in 40 CFR 1508.10, an Environmental Assessment, and Environmental Impact Statement, and for purposes of these regulations, a Categorical Exclusion determination.

Environmental Impact Statement or *EIS* means, as defined in 40 CFR 1508.11, a detailed written statement as required by 42 U.S.C. 4332(2)(C).

Environs means the territory surrounding the District of Columbia included in the National Capital Region pursuant to 40 U.S.C. 8702(a)(1).

Executive Director means the Executive Director employed by the National Capital Planning Commission pursuant to 40 U.S.C. 8711(d).

Executive Director's Recommendation or *EDR* means a concise written report and recommendation prepared by NCPC staff under the direction of NCPC's Executive Director regarding a proposed action that is transmitted to the Commission for its consideration.

Extraordinary Circumstances means special circumstances that when present negate an agency's ability to categorically exclude a project and require an agency to undertake further NEPA review.

Federal Agency means the executive agencies of the Federal government as defined in 5 U.S.C. 105.

Finding of No Significant Impact or *FONSI* means, as defined at 40 CFR 1508.13, a document prepared by NCPC or a Federal Agency applicant that briefly presents the reasons why an action, not otherwise excluded (40 CFR 1508.4), will not have a significant effect on the human environment and for which an EIS will not be prepared. It shall include the EA or a summary of it and shall note any other EAs or EISs related to it (40 CFR 1501.7(a)(5)). If the EA is included in the FONSI, the FONSI need not repeat any of the discussion in the EA but may include the EA by reference.

Lead Agency means, as defined in 40 CFR 1508.16, the agency or agencies preparing or having primary responsibility for preparing an EA or an EIS.

Memorandum of Agreement or *MOA* means for purposes of implementing the regulations in this part, a written agreement entered into between a Lead, Co-lead, Cooperating Agency, or a Non-Federal Agency to facilitate implementation of NEPA and preparation of the requisite environmental documentation. A MOA can be written at a programmatic level to apply to all projects involving NCPC and particular applicant or on a project-by-project basis.

Mitigation means, as defined in 40 CFR 1508.20, avoiding an impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and compensating for the impact by replacing or providing substitute resources or environments.

Monumental Core means the general area encompassed by the U.S. Capitol grounds, the National Mall, the Washington Monument grounds, the White House grounds, the Ellipse, West Potomac Park, East Potomac Park, the Southwest Federal Center, the Federal Triangle area, President's Park, the Northwest Rectangle, Arlington

Cemetery and the Pentagon area, and Joint Base Myer-Henderson Hall.

National Capital Planning Act means the July 1952 legislative enactment, codified at 40 U.S.C. 8701 *et seq.* that created the present day National Capital Planning Commission and conferred authority upon it to serve as the planning authority for the Federal government in the National Capital Region.

National Capital Region means, as defined in 40 U.S.C. 8702(2), the District of Columbia; Montgomery and Prince Georges Counties in Maryland; Arlington Fairfax, Loudon, and Prince William Counties in Virginia; and all cities in Maryland or Virginia in the geographic area bounded by the outer boundaries of the combined area of the counties listed.

Non-Federal Agency for purposes of the National Environmental Policy Act and the regulations in this part means those applicants outside the definition of Federal Agency that prepare plans for or undertake projects on land within the National Capital Region subject to NCPC's jurisdiction. Non-Federal Agencies include, without limitation, the Smithsonian Institution, the John F. Kennedy Center for the Performing Arts, the National Gallery of Art, the United States Institute of Peace, the Government of the District of Columbia, private parties undertaking development on Federal land, and the Maryland National Capital Parks and Planning Commission. In most instances, the Non-Federal Agency has legal jurisdiction over the project and special expertise relative to the project's components.

Notice of Availability or *NOA* means a public notice or other means of public communication that announces the availability of an EA or an EIS for public review.

Notice of Intent or *NOI* means, as defined in 40 CFR 1508.22, a notice published in the **Federal Register** that an EIS will be prepared and considered. The notice shall briefly describe the proposed action and possible alternatives; describe the agency's proposed Public Scoping process including whether, when, and where any Public Scoping meeting will be held; and state the name and address of a person within the agency who can answer questions about the proposed action and the EIS. For purposes of NCPC implementation of NEPA, NCPC may determine, at its sole discretion, to publish an NOI that an EA will be prepared and considered.

Purpose and need as described in 40 CFR 1502.13 means the underlying purpose and need for agency action to which the agency is responding in proposing the alternatives including the proposed action.

Programmatic NEPA Review means a broad or high level NEPA review that assesses the environmental impacts of proposed policies, plans or programs, or projects for which subsequent project or site-specific NEPA analysis will be conducted. A Programmatic NEPA Review utilizes a tiering approach.

Record of Decision or *ROD* means a concise public record of an agency's decision in cases requiring an EIS that is prepared in accordance with 40 CFR 1505.2.

Scope means, as defined in 40 U.S.C. 1508.25, the range of actions (connected, cumulative and similar); alternatives (no action, other reasonable courses of action; and Mitigation measures not included in the proposed action); and impacts (direct, indirect and cumulative) considered in an EIS or an EA. The process of defining and determining the scope of issues to be addressed in an EIS or EA with public involvement shall be referred to as *Public Scoping.* Internal scoping activities shall be referred to by the word scoping without capitalization.

Submission Guidelines means the formally-adopted document which describes the application process and application requirements for projects requiring review by the Commission.

Tiering means, as defined in 40 CFR 1508.28, an approach where Federal Agency applicants, NCPC on behalf of Non-Federal Agency applicants, or NCPC for its own projects initially consider the broad, general impacts of a proposed program, plan, policy, or large scale project—or at the early stage of a phased proposal—and then conduct subsequent narrower, decision focused reviews.

Subpart B—Lead and Cooperating Agencies

§ 601.4 Designation of Lead Agency.

(a) A Federal Agency applicant shall serve as the Lead Agency and prepare an EA or an EIS for:

(1) An application that requires Commission approval; and

(2) An application for action on a master plan that includes future projects that require Commission approval; provided that:

(i) The applicant intends to submit individual projects covered by the master plan to the Commission within five years of the date of Commission action on the master plan; and

(ii) The applicant intends to use the master plan EA or EIS to satisfy its NEPA obligation for specific projects referenced in the master plan.

(b) NCPC shall serve as Lead Agency and prepare an EA or an EIS for:

(1) An application submitted by a Non-Federal Agency that requires Commission approval;

(2) An application submitted by a Non-Federal Agency for action on a master plan that includes future projects that require Commission approval; provided that:

(i) The Non-Federal Agency applicant intends to submit individual projects covered by the master plan to the Commission within five years of the date of Commission action on the master plan; and

(ii) The Non-Federal Agency applicant intends to use the master plan EA or EIS to satisfy its NEPA obligation for a specific project referenced in the master plan; and

(3) An application for approval of land acquisitions undertaken pursuant to 40 U.S.C. 8731–8732.

§ 601.5 Lead Agency obligations.

(a) The obligations of a Federal Agency applicant designated as the Lead Agency in accordance with § 601.4(a) shall include, without limitation, the following:

(1) Act as Lead Agency as defined in 40 CFR 1501.5 for the NEPA process.

(2) Integrate other environmental reviews and other applicable regulatory requirements to include, without limitation, Section 106 of the NHPA.

(3) Allow NCPC, to participate as a Co-lead or Cooperating Agency, as appropriate, and consult with Commission staff as early as possible in the planning process to obtain guidance with respect to the goals, objectives, standards, purpose, need, and alternatives for the NEPA analysis.

(4) Invite affected Federal, state, regional and local agencies to participate as a Cooperating Agency in the NEPA process.

(5) Consult with the affected agencies as early as possible in the planning process to obtain guidance on the goals, objectives, standards, purpose, need, and alternatives for the NEPA analysis.

(6) Work with Cooperating Agencies and stakeholders in the following manner:

(i) Keep them informed on the project schedule and substantive matters; and

(ii) Allow them an opportunity to review and comment within reasonable time frames on, without limitation, Public Scoping notices; technical reports; public materials (including responses to comments received from the public); potential Mitigation measures; the draft EA or EIS; and the draft FONSI or ROD.

(7) Prepare the appropriate Environmental Document consistent with the applicant's NEPA regulations, the requirements of this part, and CEQ regulations. If the Lead Agency applies a CATEX and NCPC as Cooperating Agency does not have a corresponding CATEX that it can apply, the Lead Agency shall prepare an EA to satisfy NCPC's NEPA requirement.

(8) Determine in its Environmental Document whether an action will have an adverse environmental impact or would limit the choice of reasonable alternatives under 40 CFR 1505.1(e) and take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

(9) Prepare, make available for public review, and issue a FONSI or ROD.

(10) Ensure that the draft and final EIS comply with the requirements of 40 CFR 1506.5(c) and include a disclosure statement executed by any contractor (or subcontractor) under contract to prepare the EIS document and that the disclosure appears as an appendix to the EIS.

(11) Compile, maintain, and produce the Administrative Record.

(12) Provide periodic reports on implementation of Mitigation measures to NCPC and other Cooperating Parties consistent with a schedule established in the Environmental Document. All such reports shall be posted on NCPC's Web site.

(13) For an application that has yet to obtain final Commission approval, re-evaluate and update Environmental Documents that are five or more years old as measured from the time of their adoption when either or both of the following criteria apply:

(i) There are substantial changes to the proposed action that are relevant to environmental concerns.

(ii) There are significant new circumstances or information that are relevant to environmental concerns and have a bearing on the proposed action or its impacts.

(14) Consult with NCPC on the outcome of the re-evaluation of its Environmental Document; provided that if NCPC disagrees with the Lead Agency's conclusion on the need to update its Environmental Document, NCPC may, at its sole discretion, either prepare its own Environmental Document or decline to consider the application.

(b) When NCPC serves as Lead Agency in accordance with § 601.4(b), in addition to the obligations listed in paragraphs (a)(1) through (14) of this section, NCPC shall:

(1) Require Non-Federal Agency applicants other than the District of Columbia and the Maryland National Capital Parks and Planning Commission to enter into a MOA with NCPC. In the MOA, and in subsequent implementation thereof, the Non-Federal Agency shall commit to providing all necessary assistance to facilitate and ensure NCPC's compliance with its NEPA obligation.

(2) The MOA may be prepared as a programmatic MOA that addresses a uniform approach for the treatment of all applications from a particular Non-Federal Agency applicant or address a specific Non-Federal Agency application. The request to enter into a project specific MOA shall be made after a determination is made as to the inability to utilize a CATEX.

(3) A MOA with a Non-Federal Agency shall specify, without limitation, roles and responsibilities; project information necessary to prepare the proper Environmental Document; project timelines and submission schedules; the submission of periodic reports on implementation of Mitigation measures, principal contacts and contact information; and a mechanism for resolving disputes.

(4) Upon adoption of the MOA, NCPC shall publish the MOA in the **Federal Register** and post it on NCPC's Web site.

§ 601.6 Resolving disputes over Lead Agency status.

(a) In the event of a dispute with a Federal Agency applicant over Co-Lead Agency status, the parties shall use their best efforts to cooperatively resolve disputes at the working levels of their respective agencies and, if necessary, by elevating such disputes within their respective agencies.

(b) If internal resolution at higher agency levels proves unsuccessful, at NCPC's sole discretion, one of the following actions shall be pursued: The parties shall request CEQ's determination on which agency shall serve as Lead, or NCPC shall prepare its own Environmental Document, or NCPC shall decline to take action on the underlying application.

(c) Disputes other than those relating to the designation of Lead Agency status or Cooperating Agency status as described in § 601.7(b), shall be governed by the requirements of subpart G of this part.

§ 601.7 Cooperating Agencies.

(a) When a Federal Agency applicant serves as the Lead Agency, NCPC shall act as a Cooperating Agency. As a Cooperating Agency, NCPC shall, without limitation, undertake the following:

(1) Act as a Cooperating Agency as described in 40 CFR 1501.6.

(2) Assist in the preparation of and sign a MOA with terms agreeable to NCPC if requested by the Lead Agency. At the Lead Agency's discretion, the MOA may be prepared as a programmatic MOA that addresses a uniform approach for the treatment of all applications where NCPC serves as a Cooperating Agency or address a specific application. The request to enter into a project specific MOA shall be made after a determination is made by the Lead Agency on the inability to utilize a CATEX.

(3) Participate in the NEPA process by providing comprehensive, timely reviews of and comments on key NEPA materials including, without limitation, Public Scoping notices; technical reports; documents (including responses to comments received from the public); the draft and final EA or EIS; and the Draft FONSI or ROD.

(4) Supply available data, assessments, and other information that may be helpful in the preparation of the Environmental Document or the Administrative Record in a timely manner.

(5) Make an independent evaluation of the Federal Agency applicant's Environmental Document and take responsibility for the scope and contents of the EIS or EA when it is sufficient as required by 40 CFR 1506.5.

(6) Prepare and, following Commission final approval of an application, sign a FONSI or ROD. Alternatively, if NCPC concurs with the contents of a Federal Agency's FONSI or ROD, NCPC may co-sign the Federal Agency's document following the Commission's final approval of an application if co-signing is consistent with the Federal Agency's NEPA regulations.

(7) Provide documentation requested and needed by the Lead Agency for the Administrative Record.

(b) In the event a Federal Agency applicant fails to allow NCPC to participate in a meaningful manner as a Cooperating Agency, the parties shall agree to use their best efforts to cooperatively resolve the issue at the working levels of their respective agencies, and, if necessary, by elevating the issue within their respective agencies. If internal resolution at higher agency levels is unsuccessful, the parties may agree to seek mediation. Alternatively, NCPC may prepare its own Environmental Document either as a stand-alone document or a supplement to the Federal Agency applicant's Environmental Document or

take no action on the underlying application.

Subpart C—NEPA Submission Schedules

§ 601.8 NEPA submission schedule for applications governed by the National Capital Planning Act.

(a) *NEPA compliance requirements.* Federal Agency applicants, and NCPC for non-Federal Agency applications, shall comply with NEPA for the following types of projects:

(1) Projects requiring Commission approval; and

(2) Master plans requiring Commission action with future projects requiring subsequent Commission approval; provided that:

(i) The applicant intends to submit individual projects depicted in the master plan to the Commission within five years of the date of Commission action on the master plan; and

(ii) The applicant intends to use the master plan EA or EIS to satisfy its NEPA obligation for specific projects referenced in the master plan.

(b) *Timing of NEPA compliance.* When Federal Agency and Non-Federal Agency applicants submit projects of the type described in paragraph (a) of this section, the Federal Agency applicant or NCPC for a Non-Federal agency application shall submit the requisite Environmental Documentation timed to coincide with the Commission's review stages as set forth in paragraphs (c) through (f) of this section.

(c) *Concept review.* The NEPA Public Scoping process shall have been initiated by the Federal Agency applicant or NCPC for a Non-Federal Agency application before the applicant submits an application for concept review. Alternatively, if the Federal Agency applicant or NCPC is contemplating use of a CATEX, the initiation of the Public Scoping process may be deferred until the final decision on use of a CATEX is made. Any NEPA information available at the time of concept review shall be submitted by the Federal Agency applicant or NCPC for a Non-Federal Agency application to facilitate effective Commission concept review.

(d) *Preliminary review.* A Draft Environmental Document shall be issued or published before the applicant submits an application for preliminary review. The NEPA information shall be provided to the Commission to facilitate the Commission's preliminary review and the provision of meaningful Commission comments and direction.

(e) *Final review.* (1) At the time a Non-Federal Agency submits an application for final approval, the determination (FONSI or ROD) resulting from the Environmental Document shall be submitted by NCPC in a form consistent with the rules of this part. At the time a Federal Agency applicant submits an application to the Commission for final review, the Federal Agency applicant shall submit a determination (FONSI or ROD) in a form consistent with the applicant's NEPA regulations. As a Cooperating Agency, NCPC may co-sign the Federal Agency's FONSI or ROD following final Commission approval if co-signing is consistent with the Federal Agency's NEPA regulations. Alternatively, NCPC may prepare and sign its own independent document in accordance with the requirements of §§ 601.16(a) or 601.25(a) through (c).

(2) If at the time of final review, the Commission denies a Federal Agency applicant's project and requests changes thereto, the Federal Agency applicant shall proceed in a manner consistent with applicable law. The Federal Agency applicant may pursue, among others, the option of revising the project in a manner responsive to the Commission's comments. If the Federal Agency pursues this option, it shall review and consider the need for possible changes to its Environmental Document and its FONSI or ROD. Upon resubmission of a revised application for final review, the applicant shall submit a revised Environmental Document and a revised FONSI or ROD if in its judgement revised documents are necessary. If NCPC and the applicant disagree regarding the need for a revised Environmental Document and FONSI or ROD, the parties shall work together to resolve their differences. The final decision regarding the need for a revised Environmental Document and a revised FONSI or ROD shall be made by the Commission's Executive Committee.

(f) *Deviations from the submission schedule for Emergency Circumstances.* (1) This paragraph (f) applies when the following three conditions exist: NCPC is the Lead Agency; Emergency Circumstances exist; and an Extraordinary Circumstance as set forth in § 601.11 is present that precludes use of a CATEX.

(2) When the three conditions described above exist, NCPC shall undertake one of the following actions:

(i) When Emergency Circumstances render it necessary to take an action that requires an EA, the Executive Director shall prepare a concise, focused EA consistent with CEQ guidance. At the earliest opportunity, the Commission shall grant approval for the EA.

(ii) Where Emergency Circumstances make it necessary for the Commission to take an action with significant environmental impact without observing the provisions of these regulations, NCPC shall consult with CEQ about alternative arrangements. NCPC will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

§ 601.9 NEPA submission schedule for applications governed by the Commemorative Works Act.

(a) *Timing of NEPA compliance.* When, pursuant to the Commemorative Works Act, the National Park Service (NPS) or the General Services Administration (GSA) submits an application to the Commission for approval of a site and design for a commemorative work, NPS or GSA shall be required to comply with NEPA and submit the NEPA documentation timed to coincide with the Commission's review stages as set forth in paragraphs (b) through (e) of this section.

(b) *Concept site review.* (1) The NEPA Scoping Process shall have been initiated by NPS or GSA before the appropriate agency submits an application to the Commission for concept site review. Available NEPA documentation for all concept sites shall be included in the application to facilitate effective Commission concept review.

(2) The Commission shall provide comments to NPS or GSA on the multiple sites to assist the applicant in selecting a preferred site.

(c) *Concept design review for preferred sites.* (1) The NEPA Public Scoping Process shall have been initiated before NPS or GSA submits an application to the Commission for concept design review. Available NEPA documentation shall be included in the application to facilitate effective Commission concept review.

(2) The Commission shall provide comments to NPS or GSA on the preferred site(s) and the concept designs for each site to facilitate selection of a preferred site and refinement of the memorial design for that site. The Commission may establish guidelines for the applicant to follow in preparing its preliminary and final commemorative work design to avoid, minimize or mitigate environmental impacts including adverse effects on historic properties. If the Commission imposes guidelines to avoid, minimize or mitigate adverse impacts, the applicant shall address the guidelines in its Environmental Document.

(d) *Preliminary site and design review.* (1) NPS or GSA shall have issued or

published its Draft Environmental Document for the site selection process and the memorial design and shall have initiated the requisite public comment period before the applicant submits an application for preliminary site and design approval. The NEPA information shall be provided to the Commission to facilitate the Commission's preliminary review and the provision of meaningful Commission comments and directions.

(2) The Commission shall take an action on the preliminary site and design and provide comments to the applicant on the preliminary design to assist the applicant's preparation of a final design.

(e) *Final site and design review.* (1) At the time NPS or GSA submits an application to the Commission for final site and design review, the determination (FONSI or ROD) resulting from the Environmental Document shall be submitted by the applicant in a form consistent with its NEPA regulations. As a Cooperating Agency, NCPC may co-sign the applicant's FONSI or ROD following final Commission approval if co-signing is consistent with the applicant's NEPA regulations. Alternatively, NCPC may prepare and sign its own independent document in accordance with the requirements of § 601.16(a) or § 601.25(a) through (c).

(2) If at the time of final review, the Commission denies the NPS or GSA project and requests changes thereto, the applicant shall proceed in a manner consistent with applicable law. The Federal Agency applicant may pursue, among others, the option of revising the project in a manner responsive to the Commission's comments. If the Federal Agency pursues this option, it shall review and consider the need for possible changes to its Environmental Document and its FONSI or ROD. Upon resubmission of a revised application for final review, the applicant shall submit a revised Environmental Document and a revised FONSI or ROD if in its judgement revised documents are necessary. If NCPC and the applicant disagree regarding the need for a revised Environmental Document and FONSI or ROD, the parties shall work together to resolve their differences. The final decision regarding the need for a revised Environmental Document and a revised FONSI or ROD shall be made by the Commission's Executive Committee.

Subpart D—Initiating the NEPA Process

§ 601.10 Characteristics of Commission actions eligible for a Categorical Exclusion.

(a) A Categorical Exclusion is a type of action that does not individually or cumulatively have a significant effect on the human environment and which has been found to have no such effect by NCPC.

(b) Actions that generally qualify for application of a Categorical Exclusion and do not require either an EA or an EIS exhibit the following characteristics:

(1) Minimal or no effect on the human environment;

(2) No significant change to existing environmental conditions;

(3) No significant cumulative environmental impacts; and

(4) Similarity to actions previously assessed in an EA concluding in a FONSI and monitored to confirm the FONSI.

§ 601.11 Extraordinary Circumstances.

(a) Before applying a CATEX listed in § 601.12, the Executive Director shall determine if a project or plan requires additional environmental review or analysis due to the presence of Extraordinary Circumstances. If any of the Extraordinary Circumstances listed in paragraphs (b)(1) through (11) of this section are present, the Executive Director shall not apply a CATEX and ensure that the proper Environmental Document (EA or EIS) shall be prepared and made available to the Commission before the Commission takes action on the matter.

(b) Extraordinary Circumstances that negate the application of a CATEX include:

(1) A reasonable likelihood of significant impact on public health or safety.

(2) A reasonable likelihood of significant environmental impacts on sensitive resources unless the impacts have been or will be avoided, minimized, or mitigated to non-significant levels through another process to include, without limitation, Section 106 of the NHPA. Environmentally sensitive resources include without limitation:

(i) Proposed federally listed, threatened or endangered species or their designated critical habitats.

(ii) Properties listed or eligible for listing on the National Register of Historic Places.

(iii) Areas having special designation or recognition based on Federal law or an Executive Order, to include without limitation, National Historic Landmarks, floodplains, wetlands, and National Parks.

(iv) Cultural, scientific or historic resources.

(3) A reasonable likelihood of effects on the environment that are risky, highly uncertain, or unique.

(4) A reasonable likelihood of violating an Executive Order, or Federal, state or local law or requirements imposed for the protection of the environment.

(5) A reasonable likelihood of causing a significant increase in surface transportation congestion, disruption of mass transit, and interference with pedestrian and bicycle movements.

(6) A reasonable likelihood of significantly degrading air quality or violating air quality control standards under the Clean Air Act (42 U.S.C. 7401–7671q).

(7) A reasonable likelihood of significantly impacting water quality, public water supply systems, or state or local water quality control standards under the Clean Water Act (33 U.S.C. 1251 *et seq.*) and the Safe Drinking Act (42 U.S.C. 300f).

(8) A reasonable likelihood of a disproportionately high and adverse effect on low income and minority populations.

(9) A reasonable likelihood of degrading existing unsatisfactory environmental conditions.

(10) A reasonable likelihood of establishing a precedent for future action or making a decision in principle about future actions with potentially significant environmental effects.

(11) Any other circumstance that makes the action sufficiently unique in its potential impacts on the human environment that further environmental analysis and review is appropriate.

(c) The Executive Director shall include in his/her EDR, or the documentation of a delegated action, his/her decision to apply a Categorical Exclusion including consideration of possible Extraordinary Circumstances or not apply a Categorical Exclusion because of Extraordinary Circumstances.

§ 601.12 National Capital Planning Commission Categorical Exclusions.

(a) Commission actions that may be categorically excluded and normally do not require either an EA or an EIS are listed in paragraphs (a)(1) through (13) of this section. An action not specifically included in the list is not eligible for a Categorical Exclusion even if it appears to meet the general criteria listed in § 601.10(b).

(1) Approval of the installation or restoration of onsite primary or secondary electrical distribution systems including minor solar panel arrays.

(2) Approval of the installation or restoration of minor site elements, such as but not limited to identification signs, sidewalks, patios, fences, curbs, retaining walls, landscaping, and trail or stream improvements. Additional features include water distribution lines

and sewer lines which involve work that is essentially replacement in kind.

(3) Approval of the installation or restoration of minor building elements, such as, but not limited to windows, doors, roofs, building signs, and rooftop equipment and green roofs.

(4) Adoption of a Federal Element of the Comprehensive Plan or amendment thereto or broad based policy or feasibility plans prepared and adopted by the Commission in response to the Comprehensive Plan.

(5) Approval of the installation of communication antennae on Federal buildings and co-location of communication antennae on Federal property consistent with GSA Bulletin FMR D–242, Placement of Commercial Antennas on Federal Property.

(6) Approval of Federal and District government agency proposals for new construction, building expansion, or improvements to existing facilities, when all of the following apply:

(i) The new structure and proposed use are in compliance with local planning and zoning and any applicable District of Columbia, state, or Federal requirements.

(ii) The site and the scale of construction are consistent with those of existing adjacent or nearby buildings.

(iii) The proposed use will not substantially increase the number of motor vehicles in the vicinity of the facility.

(iv) There is little to no evidence of unresolved resource conflicts or community controversy related to environmental concerns or other environmental issues.

(7) Approval of transfers of jurisdiction pursuant to 40 U.S.C. 8124 that are not anticipated to result in changes in land-use and that have no potential for environmental impact.

(8) Approval of a minor modification to a General Development Plan applicable to lands acquired pursuant to the Capper-Cramton Act, 46 Stat. 482 (1930), as amended, when non-significant environmental impacts are anticipated.

(9) Reorganization of NCPC.

(10) Personnel actions, including, but not limited to, investigations; performance reviews; award of personal service contracts, promotions and awards; reductions in force, reassignments and relocations; and employee supervision and training.

(11) Legal activities including, but not limited to, legal advice and opinions; litigation or other methods of dispute resolution; and procurement of outside legal services.

(12) Procurement of goods and services, transactions, and other types of activities related to the routine and continuing administration, management, maintenance and operations of the Commission or its facilities.

(13) Adoption and issuance of rules, directives, official policies, guidelines, and publications or recommendations of an educational, financial, informational, legal, technical or procedural nature.

(b) The Executive Director shall include in his/her EDR, or the documentation of a delegated action, his/her decision to apply a Categorical Exclusion and the rationale for this decision.

Subpart E—Environmental Assessments

§ 601.13 Characteristics of Commission actions eligible for an Environmental Assessment.

(a) An EA is a concise document with sufficient information and analysis to enable the Executive Director to determine whether to issue a FONSI or prepare an EIS.

(b) Commission actions that generally require an EA exhibit the following characteristics:

(1) Minor but likely insignificant degradation of environmental quality;

(2) Minor but likely insignificant cumulative impact on environmental quality; and

(3) Minor but likely insignificant impact on protected resources.

§ 601.14 Commission actions generally eligible for an Environmental Assessment.

Commission actions that typically require preparation of an EA include without limitation:

(a) Approval of final plans for Federal public buildings in the District of Columbia, and the provisions for open space in and around the same, pursuant to 40 U.S.C. 8722(d) and D.C. Code 2–1004(c).

(b) Approval of final plans for District of Columbia public buildings and the open space around them within the Central Area pursuant to 40 U.S.C. 8722(e) and D.C. Code 2–1004(d).

(c) Recommendations to a Federal or District of Columbia agency on any master plan or master plan modification submitted to the Commission that include proposed future projects that require Commission approval pursuant to 40 U.S.C. 8722(d)–(e) and D.C. Code 2–1004(c)–(d) within a five-year timeframe.

(d) Approval of a final site and design for a commemorative work authorized under the Commemorative Works Act pursuant to 40 U.S.C. 8905.

(e) Approval of transfers of jurisdiction over properties within the District of Columbia owned by the United States or the District among or between Federal and District authorities, pursuant to 40 U.S.C. 8124, unless such transfers met the criteria of § 601.12(a)(7).

§ 601.15 Process for preparing an Environmental Assessment.

An EA prepared by NCPC as the Lead Agency for a project requiring Commission approval shall comply with the following requirements:

(a) The EA shall include, without limitation, a brief discussion of the proposed action; the purpose and need for the proposed action; the environmental impacts of the proposed action; the environmental impacts of the alternatives considered; Mitigation measures, if necessary; and a list of agencies and persons consulted in preparation of the assessment.

(b) The NCPC shall involve to the extent practicable applicants; Federal and District of Columbia agencies; the public; and stakeholders in the preparation of an EA.

(c) The NCPC, at the sole discretion of the Executive Director, may undertake Public Scoping for an action requiring an EA. The Public Scoping shall generally commence after issuance of a public notice in a media source with widespread circulation and the NCPC Web site of NCPC's intent to prepare an EA. The notice shall include the date, time and location of the Public Scoping meeting.

(d) The NCPC may solicit public review and comment of a Draft EA. The public comment period generally shall be thirty (30) calendar days. The public comment period shall begin when the Executive Director announces the availability of the Draft EA on the NCPC Web site (*www.ncpc.gov*). The NCPC, at its sole discretion, may decline to circulate a draft EA for non-controversial projects.

§ 601.16 Finding of No Significant Impact.

(a) If NCPC is the Lead Agency and the final EA supports a FONSI, NCPC shall prepare and execute a FONSI. The FONSI shall be prepared following closure of the discretionary public comment period on a Draft EA, or if no public comment period is deemed necessary, at the conclusion of the preparation of an EA. The FONSI shall briefly state the reasons why the proposed action will not have a significant effect on the environment and include the EA or a summary thereof, any Mitigation commitments, and a schedule for implementing the Mitigation commitments. The FONSI shall be signed following the

Commission final approval of the applicant's project.

(b) If NCPC is not the Lead Agency, it shall evaluate the adequacy of the Lead Agency's FONSI. If NCPC determines the FONSI to be adequate, NCPC shall proceed as follows. If consistent with the Federal Agency's NEPA regulations, NCPC may co-sign the Lead Agency's FONSI following the Commission final approval of the application. Alternatively, NCPC may prepare and execute its own FONSI consistent with the requirements of paragraph (a) of this section and sign the FONSI following the Commission's final approval of the project.

(c) In certain limited circumstances described in 40 CFR 1501.4(e)(2)(i) and (ii), a FONSI prepared by NCPC shall be available for public review for thirty (30) days before NCPC makes it final determination. NCPC shall also publish all FONSIs on its Web site seven (7) calendar days before the Commission takes action on the underlying application.

(d) If the Commission determines a Lead Agency's EA does not support a FONSI, either the Lead Agency shall prepare an EIS, or the Commission shall not approve or consider further the underlying application.

§ 601.17 Supplemental Environmental Assessments.

(a) The NCPC shall prepare a supplemental EA if five or more years have elapsed since adoption of the EA and:

(1) There are substantial changes to the proposed action that are relevant to environmental concerns; or

(2) There are significant new circumstances or information that are relevant to environmental concerns and have a bearing on the proposed action or its impacts.

(b) The NCPC may supplement a Draft or Final EA at any time to further the purposes of NEPA.

(c) The NCPC shall prepare, circulate, and file a supplement to a Draft or Final EA, and adopt a FONSI in accordance with the requirements of §§ 601.15 and 601.16. If NCPC is not the Lead Agency, it shall proceed as outlined in § 601.16(b) and (c).

Subpart F—Environmental Impact Statements

§ 601.18 Requirement for and timing of an Environmental Impact Statement.

Prior to the Commission's approval of a major Federal action significantly affecting the quality of the human environment, the Executive Director shall prepare an EIS for a Non-Federal Agency application.

§ 601.19 Context, intensity, and significance of impacts.

(a) As required by 40 CFR 1508.27(a) and (b), NCPC's determination of whether an EIS is required and whether impacts are significant shall be made with consideration to the context and intensity of the impacts associated with a proposed action.

(b) The significance of an action is determined in the context of its effects on society as a whole, the National Capital Region and its Environs, the particular interests affected, and the specific locality or area within which the proposed action is located. The context will vary from project to project and will be based on the type, attributes, and characteristics of a particular proposal.

(c) The significance of an action is also determined based on the severity of impacts imposed by the proposal. Severity shall be determined based on an evaluation of a proposal in the manner outlined in 40 CFR 1508.27(b)(1) through (10). The evaluation shall also be informed by the relevant policies of ''The Comprehensive Plan for the National Capital: Federal Elements'' and other applicable Commission plans and programs. Proposed actions that conflict with or delay achievement of the goals and objectives of Commission plans and programs are generally more likely to be found to have significant impacts than proposals that are consistent with Commission plans and programs.

(d) Proposed actions shall also be deemed significant and require an EIS if they exhibit at least one of the following characteristics:

(1) The proposed action results in a substantial change to the Monumental Core.

(2) The proposed action causes substantial alteration to the important historical, cultural, and natural features of the National Capital and its Environs.

(3) The proposed action is likely to be controversial because of its impacts on the human environment.

§ 601.20 Streamlining Environmental Impact Statements.

The NCPC as Lead Agency shall use all available techniques to minimize the length of an EIS. Such techniques include, without limitation, drafting an EIS in clear, concise language; preparing an analytic vs. encyclopedic EIS; reducing emphasis on background information; using the scoping process to emphasize significant issues and de-emphasize non-significant issues; incorporating relevant information by reference; using a programmatic EIS and tiering to eliminate duplication in subsequent EISs; and following the format guidelines of § 601.22.

§ 601.21 Programmatic Environmental Impact Statements and tiering.

(a) The NCPC shall prepare a programmatic Environmental Document (Programmatic EA or PEA or Programmatic EIS or PEIS) to assess the impacts of proposed projects and plans when there is uncertainty regarding the timing, location and environmental impacts of subsequent implementing actions. At the time NCPC undertakes a site or project specific action within the parameters of the PEA or PEIS, NCPC shall tier its Environmental Document by summarizing information in the PEIS or PEA, as applicable, and concentrate on the issues applicable to the specific action.

(b) A PEIS or PEA prepared by NCPC shall be governed by the CEQ regulations and the rules of this part.

§ 601.22 Contents of an Environmental Impact Statement.

(a) When NCPC serves as Lead Agency for an EIS, the following information shall be included in the EIS:

(1) A cover sheet. The cover sheet shall be one-page and include a list of responsible and Cooperating Agencies; the title of the proposed action that is the subject of the EIS; the name, address, and telephone number of the NCPC point of contact; the designation as to whether the statement is draft, final, or draft or final supplement; a one paragraph abstract of the EIS; and the date by which comments must be received.

(2) A summary. The summary shall accurately summarize the information presented in the EIS. The summary shall focus on the main conclusions, areas of controversy, and the issues to be resolved.

(3) A table of contents. The table of contents shall allow a reader to quickly locate subject matter in the EIS—either by topic area and/or alternatives analyzed.

(4) The purpose and need. A statement of the purpose of and need for the action briefly stating the underlying purpose and need to which the agency is responding.

(5) The identification of alternatives including the proposed action. This section shall provide a brief description and supporting documentation for all alternatives including the proposed action; the no action alternative; all reasonable alternatives including those not within the jurisdiction of the agency; alternatives considered but eliminated and the reason for their

elimination; the agency's preferred alternative, if one exists; the environmentally preferred alternative; and Mitigation measures not already included in the proposed action.

(6) The identification of the affected environment. This section shall provide a succinct description of the environment to be affected by the proposed action and the alternatives considered. This section shall include, if applicable, other activities in the area affected by or related to the proposed action.

(7) The identification of environmental consequences. This section shall focus on the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible commitments of resources which would be involved if the proposal is implemented. The impacts shall be discussed in terms of direct, indirect and cumulative effects and their significance, as well as any appropriate means to mitigate adverse impacts. The discussion shall also include issues and impact topics considered but dismissed to reveal non-impacted resources. Resource areas and issues requiring consideration shall include those identified in the scoping process, and, without limitation, the following:

(i) Possible conflicts between the proposed action and the land use plans, policies, or controls (local, state, or Indian tribe) for the area concerned.

(ii) Natural and biological resources including topography, hydrology, soils, flora, fauna, floodplains, wetlands, and endangered species.

(iii) Air quality.

(iv) Noise.

(v) Water resources including wastewater treatment and storm water management.

(vi) Utilities including energy requirements and conservation.

(vii) Solid waste and hazardous waste generation/removal.

(viii) Community facilities.

(ix) Housing.

(x) Transportation network.

(xi) Socio-cultural and economic environments.

(xii) Environmental Justice and the requirements of Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations).

(xiii) Urban quality and design of the built environment including visual resources and aesthetics.

(xiv) Historic and cultural resources to include documentation of the results of the Section 106 Consultation process.

(xv) Public health and safety.

(8) A list of preparers. This list shall include all pertinent organizations, agencies, individuals, and government representatives primarily responsible for the preparation of the EIS and their qualifications.

(9) An index. The index shall be structured to reasonably assist the reader of the Draft or Final EIS in identifying and locating major topic areas or elements of the EIS information. The level of detail of the index shall provide sufficient focus on areas of interest to any reader not just the most important topics.

(10) An appendix. The appendix shall consist of material prepared in connection with an EIS (as distinct from material which is incorporated by reference) and material which substantiates any analysis fundamental to the EIS. The material in the appendix shall be analytical and relevant to the decision to be made. The appendix shall be posted on NCPC's Web site.

(b) [Reserved]

§ 601.23 The Environmental Impact Statement process.

(a) The NCPC shall involve the applicant, Federal and District of Columbia agencies, members of the public and stakeholders in the preparation of an EIS. Public participation shall be required as part of the Public Scoping process and review of the Draft EIS. The NCPC shall also consult with agencies having jurisdiction by law or expertise. Agencies with ''jurisdiction by law'' are those with ultimate jurisdiction over a project and whose assistance may be required on certain issues and those with other kinds of regulatory or advisory authority with respect to the action or its effects on particular environmental resources.

(b) To determine the scope of an EIS through a Public Scoping process, NCPC shall proceed as follows:

(1) Disseminate a NOI in accordance with 40 CFR 1501.7 and 1506.6.

(2) Publish a NOI in the **Federal Register** and on NCPC's Web site which shall begin the Public Scoping process.

(3) Include the date, time, and location of a Public Scoping meeting in the NOI. The public meeting shall be announced at least thirty (30) calendar days in advance of its scheduled date.

(4) Hold Public Scoping meeting(s) in facilities that are accessible to the disabled; include translators if requested in advance; include signers or interpreters for the hearing impaired if requested in advance; and allow special arrangements for consultation with affected Indian tribes or other Native American groups who have environmental concerns that cannot be shared in a public forum.

(5) Consider all comments received during the announced comment period regarding the analysis of alternatives, the affected environment, and identification of potential impacts.

(6) Apply the provisions of this section to a Supplemental EIS if the Executive Director of NCPC, in his/her sole discretion, determines a Public Scoping process is required for a Supplemental EIS.

(c) A Draft EIS shall be available to the public for their review and comment, for a period of generally forty-five (45) calendar days. The public comment period shall begin when NCPC shares a copy of the Draft EIS with EPA in anticipation of EPA's publication of an NOA. The NCPC shall hold at least one public meeting during the public comment period on a Draft EIS. The public meeting shall be announced at least thirty (30) calendar days in advance of its scheduled occurrence. The announcement shall identify the subject of the Draft EIS and include the public meeting date, time, and location.

§ 601.24 Final Environmental Impact Statement.

(a) The NCPC shall prepare a Final EIS following the public comment period and the public meeting(s) on the Draft EIS. The Final EIS shall respond to oral and written comments received during the Draft EIS public comment period.

(b) The Commission shall take final action on an application following a thirty (30) day Commission-sponsored review period of the Final EIS. The thirty (30) day period shall start when the EPA publishes a NOA for the Final EIS in the **Federal Register**.

§ 601.25 Record of Decision.

(a) If NCPC is the Lead Agency and decides to recommend approval of a proposed action covered by an EIS, it shall prepare and sign a ROD stating the Commission's decision and any Mitigation measures required by the Commission.

(1) The ROD shall include among others:

(i) A statement of the decision.

(ii) The identification of alternatives considered in reaching a decision specifying the alternatives that were considered to be environmentally

preferable. The ROD shall discuss preferences among alternatives based on relevant factors including economic and technical planning considerations and the Commission's statutory mission. The ROD shall identify those factors balanced to reach a decision and the influence of various factors on the decision.

(iii) A statement as to whether all practicable means to avoid or minimize environmental harm from the alternative selected has been adopted, and if not, why they are not.

(iv) A monitoring and enforcement program that summarizes Mitigation measures.

(v) Date of issuance.

(vi) Signature of the Chairman.

(2) The contents of the draft ROD proposed for Commission adoption shall be summarized in the EDR and a full version of the draft document shall be included as an Appendix to the EDR. The Draft ROD, independently of the EDR, shall be made available to the public for review fourteen (14) calendar days prior to the Commission's consideration of the proposed action for which the EIS was prepared.

(3) The Commission shall arrive at its decision about the proposed action for which NCPC serves as the Lead Agency and its environmental effects in a public meeting of record as identified by the Commission's monthly agenda.

(b) If NCPC is not the Lead Agency, following the Commission final approval of a project to which a ROD pertains, and consistent with the Federal Agency's NEPA regulations, NCPC may take one of the following actions. It may either co-sign the Lead Agency's ROD following Commission approval of the project if NCPC agrees with its contents and conclusions or it shall prepare, sign, and sign and adopt its own ROD in accordance with the requirements of paragraphs (a)(1) through (3) of this section.

(c) If the Commission determines a Lead Agency's EIS fails to support a ROD, the Lead Agency shall revise its EIS, or, alternatively, the Commission shall not approve or give any further consideration to underlying application.

§ 601.26 Supplemental Environmental Impact Statement.

(a) The NCPC shall prepare a supplemental EIS if five or more years has elapsed since adoption of the EIS and:

(1) There are substantial changes to the proposed action that are relevant to environmental concerns; or

(2) There are significant new circumstances or information that are relevant to environmental concerns and have a bearing on the proposed action or its impacts.

(b) The NCPC may supplement a Draft or Final EIS at any time, to further the purposes of NEPA.

(c) The NCPC shall prepare, circulate, and file a supplement to a Draft or Final EIS in in accordance with the requirements of §§ 601.22 through 601.24 except that Public Scoping is optional for a supplemental EIS.

(d) The NCPC shall prepare a ROD for a Supplemental EIS. The ROD's contents, the procedure for public review, and the manner in which it shall be adopted shall be as set forth in § 601.25.

§ 601.27 Legislative Environmental Impact Statement.

(a) Consistent with 40 CFR1506.8, the Executive Director shall prepare an EIS for draft legislation initiated by NCPC for submission to Congress. The EIS for the proposed legislation shall be included as part of the formal transmittal of NCPC's legislative proposal to Congress.

(b) The requirements of this section shall not apply to legislation Congress directs NCPC to prepare.

Subpart G—Dispute Resolution

§ 601.28 Dispute resolution.

Any disputes arising under this part, shall be resolved, unless otherwise otherwise provided by law or regulation by the parties through interagency, good faith negotiations starting at the working levels of each agency, and if necessary, by elevating such disputes within the respective Agencies. If resolution at higher levels is unsuccessful, the parties may participate in mediation.

§ 601.29 [Reserved]

Dated: September 21, 2017.

Anne R. Schuyler,

General Counsel.

[FR Doc. 2017–20614 Filed 9–28–17; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 38

RIN 3038–AE64

Commission Delegated Authority Provisions for Designated Contract Markets' System Safeguards Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is adopting final rules to establish a new delegation of authority to Commission staff under the Commission's system safeguards rules to notify each designated contract market (''DCM'') of its percentage of the total annual trading volume among all DCMs regulated by the Commission for purposes of whether it is a covered DCM under the system safeguards rules.

DATES: This rule is effective September 29, 2017.

FOR FURTHER INFORMATION CONTACT: Rachel Berdansky, Deputy Director, 202–418–5429 or *rberdansky@cftc.gov;* David Steinberg, Associate Director, 202–418–5102 or *dsteinberg@cftc.gov;* David Taylor, Associate Director, 202–418–5488 or *dtaylor@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Delegation of Authority—Commission Regulation § 38.1051

Section 38.1051 of the Commission's regulations, 17 CFR 38.1051, governs the system safeguards requirements for DCMs. Pursuant to § 38.1051(n), DCMs are required to provide the Commission with their annual total trading volume by January 31 each calendar year. Section 38.1051(n)(2) also requires the Commission to provide each DCM with their percentage of the combined annual total trading volume among all DCMs regulated by the Commission by February 28 each calendar year. This annual Commission notification informs each DCM whether it is a ''covered DCM'' as that term is defined in § 38.1051(h)(1). A covered DCM is a DCM whose annual trading volume in a given year is five percent or more of the combined annual trading volume of all DCMs regulated by the Commission. Covered DCMs are required to comply with enhanced requirements with respect to the frequency of cybersecurity testing and the use of independent contractors. The Commission is amending § 38.1051 by adding paragraph (n)(3) to delegate authority to the Director of the Division of Market Oversight and designated staff to notify DCMs of their annual trading volume percentage.

II. Effective Date

As the revisions to the Commission's regulations in this rulemaking will not cause any party to undertake efforts to comply with the regulations as revised, the Commission has determined to

make this rulemaking effective upon publication in the **Federal Register**.[1]

III. Paperwork Reduction Act

The Commission may not conduct or sponsor, and a respondent is not required to respond to, a collection of information contained in a rulemaking unless the information collection displays a currently valid control number issued by the Office of Management and Budget (''OMB'') pursuant to the Paperwork Reduction Act.[2] This rulemaking contains no collection of information for which the Commission is obligated to obtain a control number from OMB.

List of Subjects in 17 CFR Part 38

Commodity futures, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 38 as follows:

PART 38—DESIGNATED CONTRACT MARKETS

■ 1. The authority citation for part 38 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6c, 6d, 6e, 6f, 6g, 6i, 6j, 6k, 6l, 6m, 6n, 7, 7a–2, 7b, 7b–1, 7b–3, 8, 9, 15, and 21, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

■ 2. In § 38.1051, add paragraph (n)(3) to read as follows:

§ 38.1051 General requirements.

* * * * *

(n) * * *

(3) *Delegation of authority.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority to provide each designated contract market with its percentage of the total annual trading volume of all designated contract markets regulated by the Commission, as set forth in paragraph (n)(2) of this section. The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter that has been delegated pursuant to this section. Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

[1] 5 U.S.C. 553(d).

[2] 44 U.S.C. 3501 *et seq.*

Issued in Washington, DC, on September 26, 2017, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Commission Delegated Authority Provisions for Designated Contract Markets' System Safeguards Requirements—Commission Voting Summary

On this matter, Chairman Giancarlo and Commissioners Bowen, Quintenz, and Behnam voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2017–20924 Filed 9–28–17; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–10413; 34–81592; 39–2518; IC–32818]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'') Filer Manual and related rules to reflect updates to the EDGAR system. The EDGAR system is scheduled to be upgraded on September 11, 2017.

DATES: Effective September 29, 2017, except that amendatory instruction 4 to § 232.301 is effective June 1, 2018. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of September 29, 2017.

FOR FURTHER INFORMATION CONTACT: In the Division of Investment Management, for questions concerning Forms N–PORT and N–CEN, contact Heather Fernandez at (202) 551–6708; in the Division of Corporation Finance, for questions concerning Forms S–1, S–3, S–4, S–8, S–11, F–1, F–3, F–4, 8–K, 10, 10–K, 10–Q, 20–F, and 40–F, contact Heather Mackintosh at (202) 551–8111; in the Office of Financial Management, for questions about negative account balances, contact Andrew Grimaldi at (202) 551–7304.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume I and Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink Online and the Online Forms/XML Web site.

The revisions to the Filer Manual reflect changes within Volume I, entitled EDGAR Filer Manual, Volume I: ''General Information,'' Version 29 (September 2017), and Volume II, entitled EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 43 (September 2017). The updated manual will be incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers may consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[3]

The EDGAR system will be upgraded to Release 17.3 on September 11, 2017, and will introduce the following changes:

In Release No. 33–10231 (October 13, 2016) [81 FR 81870], the Commission adopted changes to the reporting requirements for investment companies. Among the changes was the adoption of Form N–PORT, which requires investment companies to report information about portfolio holdings monthly in a structured format. EDGAR Release 17.3 will provide a pilot program whereby filers may submit TEST versions of the following form types:

- Public Monthly Portfolio Investments Report on Form N–PORT (NPORT–P).
- Amended Public Monthly Portfolio Investments Report on Form N–PORT (NPORT–P/A).
- Non-Public Monthly Portfolio Investments Report on Form N–PORT (NPORT–NP).
- Amended Non-Public Monthly Portfolio Investments Report on Form N–PORT (NPORT–NP/A).

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on July 17, 2017. *See* Release No. 33–10385 (July 6, 2017) [82 FR 35062].

[2] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[3] *See* Release No. 33–10385 in which we implemented revisions to reflect EDGAR Release 17.2. For additional history of EDGAR Filer Manual revisions, please see the citations therein.

• Portfolio Holdings Exhibit to Form N–PORT (NPORT–EX).

• Amended Portfolio Holdings Exhibit to Form N–PORT (NPORT–EX/A).

In Release No. 33–10231 the Commission also adopted new Form N–CEN, which will require investment companies, other than face amount certificate companies, to provide an annual report of census-type information in a structured format. EDGAR Release 17.3 will permit investment companies to submit TEST versions of the following form types:

• Annual Report for Registered Investment Companies (N–CEN).

• Amendment to Annual Report for Registered Investment Companies (N–CEN/A).

• EDGAR Release 17.3 will also introduce two additional submission form types:

• Notice under Exchange Act Rule 12b–25 of the inability to timely file Form N–CEN (NT–NCEN).

• Amendment to Notice under Exchange Act Rule 12b–25 of the inability to timely file Form N–CEN (NT–NCEN/A).

EDGAR will only accept TEST submissions of form types NPORT–P, NPORT–P/A, NPORT–NP, NPORT–NP/A, NPORT–EX, NPORT–EX/A, N–CEN, and N–CEN/A from September 11, 2017, through December 31, 2017, and then again from March 1, 2018 until May 31, 2018. Beginning June 1, 2018, EDGAR will accept both TEST and LIVE submissions of form types NPORT–P, NPORT–P/A, NPORT–NP, NPORT–NP/A, NPORT–EX, NPORT–EX/A, N–CEN, and N–CEN/A. The EDGAR Filer Manual will be revised to provide instructions for making TEST N–PORT and N–CEN filings. Corresponding changes will be made to Chapter 8 (Preparing and Transmitting Online Submissions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

In Release No. 33–10332 (March 31, 2017) [82 FR 17545] the Commission made rule and form changes to effectuate inflation adjustments and other technical amendments required under Titles I & III of the JOBS Act. Among the technical changes was the revision to Commission forms so that registrants can designate whether they are an Emerging Growth Company and whether they have elected not to use the extended transition period for complying with any new or revised financial accounting standards.

Updates are being made in EDGAR Release 17.3 so that the same disclosures can be provided for any co-registrants. The following EDGARLink Online submission form types will be revised to reflect the two fields for each co-registrant: S–1, S–1/A, S–3, S–3/A, S–4, S–4/A, S–8, S–11, S–11/A, F–1, F–1/A, F–3, F–3/A, F–4, F–4/A, 10–12B, 10–12B/A, 10–12G, 10–12G/A, 8–K, 8–K/A, 8–K12B, 8–K12B/A, 8–K12G3, 8–K12G3/A, 8–K15D5, 8–K15D5/A, 10–Q, 10–Q/A, 10–QT, 10–QT/A, 10–K, 10–K/A, 10–KT, 10–KT/A, 20–F, 20–F/A, 20FR12B, 20FR12B/A, 20FR12G, 20FR12G/A, 40–F, 40–F/A, 40FR12B, 40FR12B/A, 40FR12G, and 40FR12G/A. Corresponding changes will be made to Chapter 7 (Preparing and Transmitting EDGARLink Online Submissions) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

The ''Balance Information'' and ''Account Activity Statement'' screen of the EDGAR Filing Web site will be updated with the following text: ''A negative balance amount indicates that money is owed to the SEC and the account is past due. For more information on making filing fee payments, see *https://www.sec.gov/paymentoptions.*'' Corresponding changes will be made to Chapter 5 (Maintenance of Company Data) of the EDGAR Filer Manual Volume I: ''General Information.''

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual will be available for Web site viewing and printing; the address for the Filer Manual is *https://www.sec.gov/info/edgar/edmanuals.htm.* You may also obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.

Since the Filer Manual and the corresponding rule changes relate solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (''APA'').[4] It follows that the requirements of the Regulatory Flexibility Act[5] do not apply.

The effective date for the updated Filer Manual and the rule amendments is September 29, 2017. In accordance with the APA,[6] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 17.3 is scheduled to become available on September 11, 2017. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with these system upgrades.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[7] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[8] Section 319 of the Trust Indenture Act of 1939,[9] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[10]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. The amendment to § 232.301 published November 18, 2016 (81 FR 82019) is withdrawn.

■ 3. Effective September 29, 2017, § 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets fort the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: ''General Information,'' Version 29 (September 2017). The requirements for filing on EDGAR are set forth in the updated

[4] 5 U.S.C. 553(b)(A).

[5] 5 U.S.C. 601–612.

[6] 5 U.S.C. 553(d)(3).

[7] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[8] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78o, 78w, and 78*ll.*

[9] 15 U.S.C. 77sss.

[10] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 43 (September 2017). Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: ''N–SAR Supplement,'' Version 6 (January 2017). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available for Web site viewing and printing; the address for the Filer Manual is *https://www.sec.gov/info/edgar/edmanuals.htm.* You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. You can also inspect the document 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: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

§ 232.301 [Amended]

■ 4. Effective June 1, 2018, amend § 232.301 by removing the fourth sentence.

By the Commission.

Dated: September 13, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–20654 Filed 9–28–17; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–468]

Schedules of Controlled Substances: Removal of Naldemedine From Control

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Drug Enforcement Administration removes the substance naldemedine (4*R*,4a*S*,7a*R*,12b*S*)-3-(cyclopropylmethyl)-4a,7,9-trihydroxy-*N*-(2-(3-phenyl-1,2,4-oxadiazol-5-yl)propan-2-yl)-2,3,4,4a,5,7a-hexahydro-1*H*-4,12-methanobenzofuro[3,2-*e*]isoquinoline-6-carboxamide) including its salts from the schedules of the Controlled Substances Act. Prior to the effective date of this rule, naldemedine was a schedule II controlled substance because it can be derived from opium alkaloids. This action removes the regulatory controls and administrative, civil, and criminal sanctions applicable to controlled substances, including those specific to schedule II controlled substances, on persons who handle (manufacture, distribute, reverse distribute, dispense, conduct research, import, export, or conduct chemical analysis) or propose to handle naldemedine.

DATES: The effective date of this rule is September 29, 2017.

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

SUPPLEMENTARY INFORMATION:

Legal Authority

Pursuant to 21 U.S.C. 811(a)(2), the Attorney General may, by rule, ''remove any drug or other substance from the schedules if he finds that the drug or other substance does not meet the requirements for inclusion in any schedule.'' The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (DEA). 28 CFR 0.100.

The Controlled Substances Act (CSA) provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion, (2) at the request of the Secretary of the Department of Health and Human Services (HHS) [1], or (3) on the petition of any interested party. 21 U.S.C. 811(a). This action was initiated at the request of the Acting Assistant Secretary for Health of the HHS and by a petition by the drug sponsor to DEA to remove naldemedine from the list of scheduled controlled substances of the CSA, and is supported by, *inter alia,* a recommendation from the Assistant Secretary of the HHS and an evaluation of all relevant data by the DEA. This action removes the regulatory controls and administrative, civil, and criminal sanctions applicable to controlled substances, including those specific to schedule II controlled substances, on persons who handle or propose to handle naldemedine.

Background

Naldemedine, known chemically as (4*R*,4a*S*,7a*R*,12b*S*)-3-(cyclopropylmethyl)-4a,7,9-trihydroxy-*N*-(2-(3-phenyl-1,2,4-oxadiazol-5-yl)propan-2-yl)-2,3,4,4a,5,7a-hexahydro-1*H*-4,12-methanobenzofuro[3,2-*e*]isoquinoline-6-carboxamide, is an opium alkaloid derivative. Naldemedine is a high-affinity antagonist at the mu, kappa, and delta opioid receptors. On March 23, 2016, a new drug application (NDA) was submitted by Shionogi Inc. (Sponsor) to the Food and Drug Administration (FDA) for approval of naldemedine for the treatment of opioid induced constipation in patients with chronic non-cancer pain. The FDA approved naldemedine for marketing on March 23, 2017, under the trade name Symproic® (0.2 mg tablets).[2] Naldemedine is indicated for the treatment of opioid-induced constipation (OIC) in adults with chronic non-cancer pain. Opioid-induced constipation is caused by an activation of mu-opioid receptors in the gastrointestinal tract. Naldemedine, a peripheral acting mu-opioid antagonist, can prevent OIC.

DEA and HHS Eight Factor Analyses

On June 8, 2016, the DEA received a petition from the drug sponsor requesting that the DEA amend 21 CFR 1308.12(b)(1) to exclude naldemedine as a schedule II substance from the Controlled Substances Act (CSA). The petitioner stated that naldemedine is a potent peripherally acting mu-opioid receptor antagonist. In accordance with 21 CFR 1308.43(c), the DEA accepted the petition for filing on August 5, 2016.

On March 22, 2017, the HHS provided the DEA with a scientific and medical evaluation document prepared by the FDA entitled ''Basis for the Recommendation to Decontrol Naldemedine and its Salts from the Controlled Substances Act.'' After considering the eight factors in 21 U.S.C. 811(c), including consideration of the substance's abuse potential, legitimate medical use, and dependence liability, the Assistant Secretary of the HHS recommended that naldemedine

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

[2] *http://www.accessdata.fda.gov/drugsatfda_docs/appletter/2017/208854Orig1s000ltr.pdf* (last accessed 04/13/2017).

and its salts be removed from schedule II of the CSA. In response, the DEA conducted its own eight factor analysis of naldemedine pursuant to 21 U.S.C. 811(c). Both the DEA and HHS analyses are available in their entirety in the public docket of this rule (Docket Number DEA–468) at *http://www.regulations.gov* under ''Supporting and Related Material.''

Determination To Decontrol Naldemedine

After a review of the available data, including the scientific and medical evaluation and the recommendation to decontrol naldemedine from HHS, the DEA published in the **Federal Register** a notice of proposed rulemaking (NPRM) entitled ''Schedules of Controlled Substances: Removal of Naldemedine from Control'' which proposed removal of naldemedine including its salts from the schedules of the CSA. 82 FR 32153, July 12, 2017. The proposed rule provided an opportunity for interested persons to file a request for a hearing in accordance with DEA regulations by August 11, 2017. No requests for such a hearing were received by the DEA. The NPRM also provided an opportunity for interested persons to submit written comments on the proposal on or before August 11, 2017.

Comments Received

The DEA received six comments on the proposed rule to remove naldemedine from control. Five commenters supported the decontrol of naldemedine. One commenter submitted a comment not related to the proposed decontrol action.

Support

One commenter stated that naldemedine does not induce euphoria therefore limiting its potential for abuse. Another commenter stated that naldemedine can help alleviate constipation which will reduce the amount of time a patient is absent from work or the need for placement on disability. Further, another commenter stated that since naldemedine is a naltrexone derivative, it should be unscheduled.

One commenter stated that senators and representatives should support the removal of naldemedine to allow for safe and efficacious use of the drug due to its lack of abuse potential in clinical use. This commenter further suggested that naldemedine be made available to the public without the need for a prescription to treat individuals overdosed on opioids.

DEA Response: The DEA appreciates the comments in support of this rulemaking. The comment about making naldemedine available without prescription does not relate to the factors determinative of control of a substance (21 U.S.C. 811(c)) or the criteria for placement of a substance in a particular schedule (21 U.S.C. 812(b)).

Unrelated Comment

A commenter expressed concerns about reports on ''opioid epidemic'' without consideration of the need for opioids by chronic pain patients. This commenter felt ''patients are being denied, dismissed and overlooked by our drs (sic) due to all the scrutiny associated with treating chronic pain disease.''

DEA Response: Because naldemedine is not an opioid analgesic, this comment about the use of opioid analgesic in the management of pain is unrelated to the current decontrol action. Further it does not relate to the factors determinative of control of a substance (21 U.S.C. 811(c)) or the criteria for placement of a substance in a particular schedule (21 U.S.C. 812(b)).

Request for Immediate Effective Date

The drug sponsor (Shionogi Inc.) requested that the effective date of this decontrol action correspond to the date of publication of the Final Rule.

DEA Response: Generally, DEA scheduling actions are effective 30 days from the date of publication of the final rule in the **Federal Register**. 21 CFR 1308.45; *see also* 5 U.S.C. 553(d). In accordance with 21 CFR 1308.45, the DEA finds that the limited availability of effective therapeutic treatments for opioid induced constipation (OIC), coupled with the fact that this is an action for decontrol, supports the finding that conditions of public health require this action to be effective immediately upon publication in the **Federal Register**. Due to adverse side effects, the majority of treatment alternatives currently available for OIC have restricted clinical application. By comparison, in clinical studies, naldemedine was well tolerated and exhibited a good safety profile in patients with opioid-induced bowel dysfunction.

In making the determination to make this rule effective immediately, the DEA took into consideration the effects of immediate implementation. The DEA agrees that making this rule immediately effective is in the best interest of the public health and will not burden registrants, the healthcare system or law enforcement. The DEA notes that its decision to make this rule effective immediately aligns with the exceptions to the 30-day effective date requirement of the Administrative Procedure Act (APA). One of the APA's exceptions to the 30-day effective date is for a substantive rule granting or recognizing an exemption or which relieves a restriction. 5 U.S.C. 553(d)(1).

Scheduling Conclusion

Based on the consideration of all comments, the scientific and medical evaluation and accompanying recommendation of the HHS, and based on the DEA's consideration of its own eight-factor analysis, the Administrator finds that these facts and all relevant data demonstrate that naldemedine does not meet the requirements for inclusion in any schedule, and will be removed from control under the CSA.

Regulatory Analyses

Executive Orders 12866 and 15363

In accordance with 21 U.S.C. 811(a), this scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. The purpose of this rule is to remove naldemedine from the list of schedules of the CSA. This action removes regulatory controls and administrative, civil, and criminal sanctions applicable to controlled substances for handlers and proposed handlers of naldemedine. Accordingly, it has the potential for some economic impact in the form of cost savings.

This rule will affect all persons who handle, or propose to handle, naldemedine. Due to the wide variety of unidentifiable and unquantifiable variables that potentially could influence handling of naldemedine, the DEA is unable to determine the number of entities and small entities which might handle naldemedine. However, the DEA estimates that all persons who handle, or propose to handle naldemedine, are currently registered with the DEA to handle controlled substances. Therefore, the 1.7 million (1,683,023 as of April 2017) controlled substance registrations, representing approximately 436,761 entities, would be the maximum number of entities affected by this rule. The DEA estimates that 425,856 (97.5%) of 436,761 affected entities are ''small entities'' in accordance with the RFA and Small Business Administration size standards.

The DEA estimates all controlled substance registrants handle both controlled and non-controlled substances and these registrants are expected to continue to handle naldemedine. Additionally, since prospective naldemedine handlers are likely to handle other controlled substances, the cost benefits they would receive as a result of the de-control of naldemedine is minimal. As naldemedine handlers continue to handle other controlled substances, they will need to maintain their DEA registration and keep the same security and recordkeeping processes, equipment, and facilities in place and would experience only minimal reduction in security, inventory, recordkeeping, and labeling costs. Physical security control requirements are the same for controlled substances listed in schedules II, III, IV, and V for the vast majority of registrants (practitioners).

While the DEA does not have a basis to estimate the number of affected entities, the DEA estimates that the maximum number of affected entities is 436,761 of which 425,856 are estimated to be small entities. Since the affected entities are expected to handle other controlled substances and maintain security and recordkeeping facilities and processes consistent with controlled substances, the DEA estimates any economic impact will be minimal. Because of these facts, this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* the DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act

This action does not impose a new collection of information requirement under the Paperwork Reduction Act, 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). This rule will not result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets. However, pursuant to the CRA, the DEA has submitted a copy of this final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

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

For the reasons set out above, 21 CFR part 1308 is amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.12, revise the introductory text of paragraph (b)(1) to read as follows:

§ 1308.12 Schedule II.

* * * * *

(b) * * *

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, naldemedine, nalmefene, naloxegol, naloxone, and naltrexone, and their respective salts, but including the following:

* * * * *

Dated: September 22, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–20919 Filed 9–28–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD–2017–HA–0039]

RIN 0720–AB70

Establishment of TRICARE Select and Other TRICARE Reforms

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Interim final rule.

SUMMARY: This interim final rule implements the primary features of section 701 and partially implements several other sections of the National Defense Authorization Act for Fiscal Year 2017 (NDAA–17). The law makes significant changes to the TRICARE program, especially to the health maintenance organization (HMO)-like health plan, known as TRICARE Prime; to the preferred provider organization (PPO) health plan, previously called TRICARE Extra which is to be replaced

by TRICARE Select; and to the third health care option, known as TRICARE Standard, which will be terminated as of December 31, 2017, and also replaced by TRICARE Select. The statute also adopts a new health plan enrollment system under TRICARE and new provisions for access to care, high value services, preventive care, and healthy lifestyles. In implementing the statutory changes, this interim final rule makes a number of improvements to TRICARE.

DATES: This interim final rule is effective October 1, 2017. Comments will be received by November 28, 2017.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number, or title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Ellis, Defense Health Agency, TRICARE Health Plan, (703) 681–0063.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Interim Final Rule

In implementing section 701 and partially implementing several other sections of NDAA–17, this interim final rule advances all four components of the Military Health System's quadruple aim of improved readiness, better care, better health, and lower cost. The aim of improved readiness is served by reinforcing the vital role of the TRICARE Prime health plan to refer patients, particularly those needing specialty care, to military medical treatment facilities (MTFs) in order to ensure that military health care providers maintain clinical currency and proficiency in their professional fields. The objective of better care is enhanced by a number of improvements in beneficiary access to health care services, including increased geographical coverage for the TRICARE Select provider network, reduced administrative hurdles for TRICARE Prime enrollees to obtain urgent care services and specialty care referrals, and promotion of high value services and medications. The goal of better health is advanced by expanding TRICARE coverage of preventive care services, treatment of obesity, high-value care, and telehealth. And the aim of lower cost is furthered by refining cost-benefit assessments for TRICARE plan specifications that remain under DoD's discretion and adding flexibilities to incentivize high-value health care services.

B. Legal Authority for the Regulatory Action

This interim final rule is required to implement or partially implement several sections of NDAA–17, including 701, 706, 715, 718, and 729. The legal authority for this rule also includes chapter 55 of title 10, United States Code.

C. Summary of Major Provisions of the Interim Final Rule

The major provisions of the interim final rule are:

➢ The establishment of TRICARE Select as a self-managed, PPO option under the TRICARE program. TRICARE Select replaces the TRICARE Extra and Standard programs and adopts a number of improvements, including fixed copayments rather than cost shares for covered benefits provided by a civilian network provider. TRICARE Select beneficiaries can choose any provider for their healthcare; however, they will enjoy lower out-of-pocket costs if they choose preferred providers within the TRICARE civilian network.

➢ The continuation of TRICARE Prime as a managed care, HMO-like option under the TRICARE program. TRICARE Prime adopts a number of changes to conform to specifications in the new law, including categories of health care services applicable to the determination of copayment amounts (such as primary care, specialty care, emergency care).

➢ Improved access to care, including a codified requirement that the TRICARE Select health care plan is available in all locations and at least 85% of the U.S. beneficiary TRICARE Select population is covered by the TRICARE network. Also, for TRICARE Prime enrollees, there are new procedures to ensure timely appointments for health care services and to authorize some or all urgent care visits without the need for referral from a primary care manager.

➢ Promotion of high value services and medications, telehealth services, preventive health care, and healthy lifestyles.

➢ A new design for the health care enrollment system, including mandatory enrollment to maintain TRICARE coverage, an annual open season enrollment period, and hassle-free enrollment procedures.

➢ Other features include preservation of benefits for active duty dependents and TRICARE-for-Life beneficiaries, and changes to the TRICARE Young Adult (TYA), TRICARE Reserve Select (TRS), TRICARE Retired Reserve (TRR), Continued Health Care Benefit Program (CHCBP), and TRICARE Retiree Dental Program (TRDP) to conform with new statutory requirements.

II. Provisions of Interim Final Rule

A. Establishment of TRICARE Select

The rule implements the new law (section 701 of NDAA–17) that establishes TRICARE Select as a self-managed, PPO program. It allows beneficiaries to use the TRICARE civilian provider network, with reduced out-of-pocket costs compared to care from non-network providers, as well as military treatment facilities (when space is available). Similar to the long-operating ''TRICARE Extra'' and ''TRICARE Standard'' plans, which TRICARE Select replaces, a major feature is that enrollees will not have restrictions on their freedom of choice with respect to health care providers. TRICARE Select is based primarily on 10 U.S.C. 1075 (as added by section 701 of NDAA–17) and 10 U.S.C. 1097. With respect to beneficiary cost sharing, the statute introduces a new split of beneficiaries into two groups: One group (which the rule refers to as ''Group A'') consists of sponsors and their family members who first became affiliated with the military through enlistment or appointment before January 1, 2018, and the second group (referred to as ''Group B'') who first became affiliated on or after January 1, 2018. In general, beneficiary out-of-pocket costs for Group B are higher than for Group A.

In addition to implementing the statutory specifications, the interim final rule also makes improvements for TRICARE Select Group A enrollees, compared to the features of the old TRICARE Extra plan. One such improvement is to convert the current cost-sharing requirement of 15% for active duty family members and 20% for retirees and their family members of the allowable charge for care from a network provider to a fixed dollar

copayment calculated to approximately equal 15% or 20% of the average allowable charge for the category of care involved. Consistent with prevailing private sector health program practices, the fixed dollar copayment is more predictable for the patient and easier for the network health care provider to administer. The breakdown of categories of care (such as outpatient primary care visit, specialty care visit, emergency room visit, etc.) contained in the rule is the same as the categories now specified in the statute for Group B Select enrollees.

A second improvement in TRICARE Select (for both Group A and Group B) is that additional preventive care services that previously were only offered to TRICARE Prime beneficiaries will now (under the authority of 10 U.S.C. 1097 and NDAA–17) also be covered for Select enrollees when furnished by a network health care provider. These are services recommended by the United States Preventive Services Task Force and the Health Resources and Services Administration of the Department of Health and Human Services.

These improvements are based partly on the statutory provision (10 U.S.C. 1075(c)(2)) that Group A Select enrollee cost-sharing requirements are calculated as if TRICARE Extra were still being carried out by DoD. TRICARE Extra specifications are based on the underlying authority of 10 U.S.C. 1097, which allows DoD to adopt special rules for the PPO plan. This statute was the basis for the original set of rules for TRICARE Extra, which were adopted in 1995, and is the authority for these improved rules for TRICARE Select Group A, adopted as if TRICARE Extra were still being carried out by DoD.

Under the interim final rule, the cost sharing rules applicable to TRICARE Select Group B are those specified in 10 U.S.C. 1075. For TRICARE Select Group A, in addition to the copayment rules noted above, consistent with 10 U.S.C. 1075, an enrollment fee of $150 per person or $300 per family will begin January 1, 2021, for most retiree families, with annual updates thereafter based on the cost of living adjustment (COLA) applied to retired pay. At the same time, the catastrophic cap will increase from $3,000 to $3,500 for these retiree families. These changes, however, will not apply to TRICARE Select Group A active duty families, survivors of members who died while on active duty, or disability retiree families; that is, no enrollment fee will be applicable to this group and the applicable catastrophic cap will continue to be $1,000 for active duty families as established under 10 U.S.C. 1079(b) and $3,000 for survivors of members who died while on active duty or disability retiree families as established under 10 U.S.C. 1086(b).

B. Continuation of TRICARE Prime

A second major feature of this interim final rule, based primarily on 10 U.S.C. 1075a (also added by section 701 of NDAA–17), is the continuation of TRICARE Prime as a managed care, HMO-like program. It generally features use of military treatment facilities (MTFs) and substantially reduced out-of-pocket costs for authorized care provided outside MTFs. Beneficiaries generally agree to use military treatment facilities and designated civilian provider networks and to follow certain managed care rules and procedures. Like with TRICARE Select, with respect to beneficiary cost sharing, the statute introduces a new split of beneficiaries into two groups (again referred to in the rule as Group A and Group B) based on the military sponsor's initial enlistment or appointment before January 1, 2018 (Group A), or on or after that date (Group B). Beneficiary cost sharing for Group B is slightly higher than for Group A.

As with TRICARE Select, the cost sharing specifications for TRICARE Prime Group B are set forth in the statute, and those for Group A are calculated in accordance with other health care provisions of title 10 (rather than the new section 1075a). The primary original statutory authority for the TRICARE Prime health plan, established by DoD regulation in 1995, was 10 U.S.C. 1097, and this continues to be relied upon for the continued operation of TRICARE Prime for Group A. Also relevant to the original terms of TRICARE Prime was section 731 of the National Defense Authorization Act for Fiscal Year 1994. That law required DoD to include, to the maximum extent practicable, the HMO-like option under TRICARE. That law also required that the HMO-like option ''shall be administered so that the costs incurred by the Secretary under the TRICARE program are no greater than the costs that would otherwise be incurred'', to provide health care to beneficiaries. The extent to which this ''cost neutrality'' requirement has not been maintained was recently highlighted by the Congressional Budget Office: ''CBO estimates that under current law, a typical retiree household enrolled in TRICARE Prime as a 'family' in 2018, and for whom TRICARE is the primary payer of health benefits, will cost DoD about $17,400, and a typical family that uses Standard/Extra will cost DoD about $12,700.'' [1]

Based on the TRICARE Prime cost neutrality provision in NDAA–1994, the original 1995 TRICARE Prime regulation included (at 32 CFR 199.18(g)) that cost sharing requirements ''may be updated for subsequent years to the extent necessary to maintain compliance with statutory requirements pertaining to government costs.'' Since NDAA–1994, Congress took away DoD's discretion for enrollment fee increases, which are now tied by law to the retired pay COLA. However, DoD continues to have discretion to update copayment amounts—which have not changed since 1995—and this discretion is confirmed by the newly enacted 10 U.S.C. 1075a(a)(3).

This discretion to update copayment amounts is continued in the interim final rule, but the framework for setting Prime Group A copayment amounts is being revised. Specifically, DoD is adopting for Group A the same structure of categories of care that Congress adopted for Group B. Thus, for example, while the current TRICARE Prime copayment amount makes no distinction between primary care and specialty care services, the new Group B structure under the statute does have a different copayment for primary care and specialty care. Under the rule, copayment amounts for Group A beneficiaries will be set for each of those categories, as well as the other categories of care the statute now specifies for Group B enrollees. The interim final rule does not specify the amount for each category of care. Rather, consistent with DoD's discretion under current statute and regulation, the actual amount will be set each year prior to open season enrollment. The interim final rule does, however, specify that the amount for each category of care for Group A enrollees may not exceed the amount that Congress set for Group B enrollees. In this way, the Prime copay structure would be in alignment with proposed legislative changes recommended by the Department to Congress for enactment this year to eliminate the ''grandfathering'' of Group A retiree families and return to a single TRICARE Prime model for all working-age retiree families. Again, it should be noted that this applies only to per-service copayments; enrollment fee increases for Group A enrollees will continue to be based on the retired pay COLA.

[1] Congressional Budget Office Cost Estimate, S. 2943, National Defense Authorization Act for Fiscal Year 2017, June 10, 2016, page 17.

The interim final rule also continues the point-of-service provision of the current TRICARE Prime plan. Any health care services obtained by a Prime enrollee not in accordance with the rules and procedures of Prime (*e.g.* failure to obtain a primary care manager referral when such a referral is required or seeing a non-network provider when a network provider is available) will not be paid for under Prime rules, but may be covered by the point-of-service option. This results in higher cost sharing—specifically, a deductible of $300 per person and $600 per family, and a copayment of 50 percent of the allowable charges after the deductible. Point-of-service charges do not count against the annual catastrophic cap. These point-of-service rules continue for TRICARE Prime Group A and are also applicable to Group B. For Group B, the rules for point-of-service charges are specified in 10 U.S.C. 1075a(c), which clarifies that point-of-service cost sharing is ''notwithstanding'' the usual cost sharing rules of Prime Group B enrollees.

One other matter on which the interim final rule preserves DoD discretion, similar to that in the current regulation, is with respect to the locations where TRICARE Prime is offered. This is noted in the current regulation at 32 CFR 199.17(a)(5). Under the interim final rule, the locations where TRICARE Prime will be offered will be determined by the Director, Defense Health Agency (DHA) and announced prior to the annual open season enrollment period. The guiding principle for this decision is that the purpose of TRICARE Prime is to support the medical readiness of the armed forces and the readiness of medical personnel. Codification in regulation of this guiding principle is a corollary to the codification by Congress in statute, specifically sections 703 and 725 of NDAA–17 that MTFs exist to support the medical readiness of the armed forces and the readiness of medical personnel.

TRICARE Prime, especially for working age retirees and family members, provides MTFs clinical workload, including for a range of medical specialty areas that permit military health care providers to maintain currency and proficiency in their respective clinical fields. This important support of a ready medical force is what justifies the higher government cost of Prime (which CBO estimates at $17,400 per retiree family), notwithstanding the original statutory requirement of cost neutrality between TRICARE Prime and TRICARE Standard. This cost-benefit assessment supports the conclusion that it is practicable to offer TRICARE Prime in areas where it supports the medical readiness of one or more MTFs. Additionally, where TRICARE Prime is offered, it may be limited to active duty family members if the Director, DHA determines it is not practicable to offer TRICARE Prime to retired beneficiaries as well—a determination that again would take into account the nature of the supported MTF and the range of services it offers.

C. Improved Access to Care

A third significant change in the interim final rule is a set of improvements in standards for access to care. The TRICARE Select plan replaces TRICARE Standard as the generally applicable plan in all areas. Under TRICARE Select, eligible beneficiaries can choose any provider for their healthcare, and they will enjoy lower out-of-pocket costs if they choose providers within the TRICARE civilian network. The vast majority of TRICARE beneficiaries located in the United States will have access to TRICARE network providers (it is DoD's plan that at least 85% of the U.S. beneficiary population under TRICARE Select will be covered by the network upon implementation), similar to the current TRICARE Extra option, but with the benefit of predictable fixed dollar copayments. In cases in which a network provider is not available to a TRICARE Select enrollee, such as in remote locations where there are very few primary or specialty providers, enrollees will still have access to any TRICARE authorized provider, with cost sharing comparable to the current TRICARE Standard plan (*i.e.* 25% for retired category beneficiaries).

A second interim final rule enhancement for access to care is that if a TRICARE Prime enrollee seeks to obtain an appointment for care from the managed care support contractor but is not offered an appointment within the applicable access time standards from a network provider, the enrollee will be authorized to receive care from any authorized provider without incurring the additional fees associated with point-of-service care.

A third access to care improvement under the interim final rule is that the TRICARE Prime referral requirement may be waived for urgent care visits for Prime enrollees other than active duty members. This is similar to the current pilot program, which waives the referral requirement (other than for active duty members) for up to two urgent care visits per year. The specific number of urgent care visits without a referral will be determined annually prior to the beginning of the open season enrollment period.

A fourth access to care improvement is adoption of the new statutory provision that a primary care manager who believes a referral to a specialty care network provider is medically necessary and appropriate need not obtain pre-authorization from the managed care support contractor. Managed care support contractor preauthorization is only required with respect to a primary care manager's referral for inpatient hospitalization, inpatient care at a skilled nursing facility, inpatient care at a residential treatment center and inpatient care at a rehabilitation facility.

D. Promotion of High Value Services and Medications and Telehealth Services

In addition to the expansion noted above concerning preventive care services, the interim final rule makes a number of other improvements in TRICARE Prime and TRICARE Select based on provisions of sections 701(h), 706, 718, and 729 of NDAA–17. Section 701(h), among other things, provides for a four-year pilot program to encourage use by patients of high value services and medications. Section 706, among other things, authorizes special arrangements with provider groups that will improve population-based health outcomes and focus more on preventive care. Section 729 calls for special actions to incentivize medical intervention programs to address chronic diseases and other conditions and healthy lifestyle interventions. Section 718, among other things, requires actions to promote greater use of telehealth services under TRICARE. While these sections of NDAA–17 also require actions outside the scope of this interim final rule (such as contracting actions) they can be partially implemented, consistent with Congressional intent, in this rule. The interim final rule does this in several ways.

First, the interim final rule authorizes coverage under TRICARE Prime and TRICARE Select for medically necessary treatment of obesity even if it is the sole or major condition treated. Under 10 U.S.C. 1079(a)(10), this is disallowed under the basic program. However, it is DoD's conclusion that the underlying authority of 10 U.S.C. 1097, together with section 729 of NDAA–17 (which specifically authorizes medical intervention for obesity), allow the Department to cover these services when provided by a network provider

for a TRICARE Prime or TRICARE Select enrollee.

Second, the interim final rule codifies authority of the Director, DHA to waive or reduce copayment requirements for TRICARE Prime and TRICARE Select enrollees for care received from network providers for certain health care services that provide especially high value in terms of better health outcomes for patients. Authority for this includes section 706 and 729 of NDAA–17. This is also consistent with the four-year pilot program authority of section 701(h), but does not necessarily rely on that time-limited authority. Consistent with the intent of these sections, the Department also intends to use the authority of § 199.21(j)(3) of the TRICARE Pharmacy Benefits Program section of the TRICARE regulations to encourage use of high value medications by reducing or eliminating the copayment of selected medicines.

Third, consistent with section 718 of NDAA–17, the interim final rule provides that health care services covered by TRICARE and provided through the use of telehealth modalities are covered services to the same extent as if provided in person at the location of the patient if those services are medically necessary and appropriate for such modalities. The Director, DHA will establish standardized payment methods to reimburse for such services, and shall reduce or eliminate, as appropriate, beneficiary copayments or cost-shares for such services in cases in which a copayment would otherwise apply. This may be done by designating some telehealth services as high value services for which lower copays apply as well as the elimination of any beneficiary cost-sharing related to originating site fees when used to support the provision of telehealth services.

E. Changes to Health Plan Enrollment System

A fourth major change in the interim final rule is its implementation of the new statutory design for the health care enrollment system. Starting in calendar year 2018, beneficiaries other than active duty members and TRICARE-for-Life beneficiaries must elect to enroll in TRICARE Select or TRICARE Prime in order to be covered by the private sector care portion of TRICARE. While TRICARE-for-Life beneficiaries under the age of 65 are permitted to enroll in TRICARE Prime under limited circumstances, their failure to enroll will not affect their coverage by the private sector care portion of TRICARE. Enrollment will be done during an open season period prior to the beginning of each plan year, which operates with the calendar year. An enrollment choice will be effective for the plan year. As an exception to the open season enrollment rule, enrollment changes can be made during the plan year for certain qualifying events, such as a change in eligibility status, marriage, divorce, birth of a new family member, relocation, loss of other health insurance, or other events.

Eligible Prime or Select beneficiaries who do not enroll will no longer have private sector care coverage under the TRICARE program (including the TRICARE retail pharmacy and mail order pharmacy programs) until the next open enrollment season or they have a qualifying event, except that they do not lose any statutory eligibility for space-available care in military medical treatment facilities. There is a limited grace period exception to this enrollment requirement for calendar year 2018, as provided in section 701(d)(3) of NDAA–17, to give beneficiaries another chance to adjust to this new requirement for annual enrollment. For the administrative convenience of beneficiaries, there are also procedures for automatic enrollment in Prime and Select for most active duty family members, and automatic renewal of enrollments of covered beneficiaries, subject to the opportunity to decline or cancel.

Due to a compressed implementation schedule that precludes an annual open season enrollment period in calendar year 2017 for existing TRICARE beneficiaries to elect or change their TRICARE coverage, the Department will convert existing TRICARE Standard coverage to TRICARE Select coverage effective January 1, 2018. All other existing TRICARE coverages will be renewed effective January 1, 2018. As noted previously, beneficiaries may elect to change their TRICARE coverage anytime during the limited grace period in calendar year 2018.

F. Additional Provisions of Interim Final Rule

The interim final rule has several other noteworthy provisions. First, there are no changes in benefits for TRICARE-for-Life beneficiaries, or generally in cost sharing levels for active duty family members. Second, although ''TRICARE Standard'' is terminated as a distinct TRICARE plan as of December 31, 2017, basic program benefits (as established under 32 CFR 199.4) continue under both TRICARE Prime and TRICARE Select. In addition, when a TRICARE Select beneficiary receives services covered by the basic program benefits from an authorized health care provider who is not part of the TRICARE provider network, that care is covered by TRICARE as ''out-of-network'' care under terms that match the old TRICARE Standard plan. Third, in order to transition enrollment fees, deductibles, and catastrophic caps from a fiscal year basis to a calendar year basis, special rules apply for the last quarter of calendar year 2017, including that a Prime enrollee's enrollment fee for the quarter is one-fourth of the enrollment fee for fiscal year 2017, and the deductible amount and the catastrophic cap amount for fiscal year 2017 will be applicable to the 15-month period of October 1, 2016, through December 31, 2017. A similar transition rule will apply to TRICARE for Life, TYA, TRR and TRS to align remaining program deductibles and/or catastrophic caps from a fiscal year to calendar year basis for consistency and ease of administration.

Additionally, the interim final rule adopts several changes to regulatory provisions applicable to the TYA, TRS, TRR, and TRDP programs to conform with new statutory requirements. In implementing section 701(a) of NDAA–17, together with section 701(j)(1)(F), the rule conforms the TYA regulation to the statutory language which established the eligibility of TYA under 10 U.S.C. 1110b to enroll in TRICARE Select and provided that the TYA premium shall apply instead of the otherwise applicable TRICARE Prime or Select enrollment fee. In implementing section 701(j)(1)(B), the rule conforms the TRICARE Reserve Select plan regulation to the statutory language which defines ''TRICARE Reserve Select'' as the TRICARE Select self-managed, preferred-provider network option under 10 U.S.C. 1075 made available to beneficiaries under 10 U.S.C. 1076d and requires payment of a premium for coverage instead of the TRICARE Select enrollment fee. In implementing section 701(j)(1)(C), the rule conforms the TRICARE Retired Reserve plan regulation to the statutory language which defines ''TRICARE Retired Reserve'' as the TRICARE Select self-managed, preferred-provider network option under 10 U.S.C. 1075 made available to beneficiaries under 10 U.S.C. 1076e and requires payment of a premium for coverage instead of the TRICARE Select enrollment fee. In implementing section 701(a) and 701(e), the rule conforms the CHCBP regulation to replace TRICARE Standard with TRICARE Select as the continuation health care benefit for Department of Defense and the other uniformed services beneficiaries losing eligibility.

In implementing section 715, the rule conforms the TRDP regulation to the statutory language which authorizes an interagency agreement between the Department of Defense and the Office of Personnel Management to allow beneficiaries otherwise eligible for the TRDP to enroll in a dental insurance plan offered under the Federal Employees Dental and Vision Insurance Program. Under the statute, TRDP beneficiaries will have the opportunity to access a dental plan with significantly higher annual maximum benefit and a lower premium cost than available under the current TRDP, while giving the Department an opportunity to eliminate costs associated with procuring and administering a separate TRDP contract.

Also, the interim final rule adopts several changes to regulatory provisions applicable to benefit coverage of medically necessary food and vitamins. Section 714 of NDAA–17 confirms long-standing TRICARE policy authorizing benefit coverage of medically necessary vitamins when prescribed for management of a covered disease or condition. In addition, while section 714 confirms long-standing TRICARE policy authorizing medical nutritional therapy coverage of medically necessary food and medical equipment/supplies necessary to administer such food when prescribed for dietary management of a covered disease or condition, the law also allows the medically necessary food benefit to include coverage of low protein modified foods. Consistent with this we also recognize the role of Nutritionists and Registered Dieticians in the appropriate planning for the use of medically necessary foods.

Additionally, the interim final rule adopts several conforming changes to regulatory provisions applicable to general TRICARE administration, the TRICARE Pharmacy Benefits Program and the Extended Health Care Option to reflect transition of deductibles, catastrophic caps, and program reimbursement limitations, as applicable, from a fiscal year basis to a calendar year basis for consistency and ease of administration. Simultaneously, technical corrections are being made to the TRICARE Pharmacy Benefits Program to conform regulation provisions to statutory provisions enacted by section 702 of the National Defense Authorization Act for Fiscal Year 2016.

Finally, the interim final rule includes authority for the Director, DHA to establish preferred provider networks in areas outside the United States where it is determined to be economically in the best interests of the Department of Defense. As a result of the TRICARE Philippines Demonstration Project, which commenced in January 1, 2013, the Department has determined that the TRICARE contracted preferred provider network established in designated locations in the Philippines provided adequate access to beneficiaries with 97 percent of care delivered by network providers. It also successfully achieved the demonstration goals of reducing aberrant billing activities, reduced out-of-pocket expenses for beneficiaries, and increased overall beneficiary satisfaction while leading to a net savings to the government. Although the demonstration was projected to continue through December 31, 2018, the Philippines preferred provider network is determined to be economically in the interests of the Department of Defense and the demonstration shall terminate effective December 31, 2017, with transition of the demonstration's approved preferred provider network to a TRICARE Select preferred provider network effective January 1, 2018.

G. Recap: Cost Sharing Tables

The following two tables summarize beneficiary fees (including enrollment fees, deductibles, cost sharing amounts, and catastrophic loss protection limits) under TRICARE Select and TRICARE Prime for calendar year 2018. For future calendar years, all fees are subject to review and annual updating in accordance with sections 1075, 1075a, and 1097 of title 10, United States Code. Table 1 is for active duty family members (ADFMs); Table 2 is for retiree families. As a guide for understanding the tables:

➢ For services listed as ''to be determined (TBD)'', the Director, DHA will ensure the applicable fee for calendar year 2018 will be available at *www.health.mil/rates* before December 1, 2017.

➢ For services not specifically addressed in these tables, applicable cost-sharing requirements shall be established by the Director, DHA and published annually.

➢ For services designated as ''IN'', the listed fee is for covered services or supplies obtained ''in-network,'' meaning received from TRICARE authorized network providers.

➢ For TRICARE Prime beneficiaries, if covered services or supplies are not obtained in accordance with the rules and procedures of Prime (*e.g.,* failure to obtain a required referral or unauthorized use of a non-network provider), the services or supplies will be reimbursed under a point-of-service option for which there is a deductible of $300 per person or $600 per family and a cost share of 50 percent of the allowable charges after the deductible.

➢ For services designated as ''OON'', the listed fee for TRICARE Select beneficiaries is for covered services or supplies obtained ''out-of-network'', meaning received from non-network TRICARE authorized providers.

➢ Certain preventive services have no cost sharing whether received from network or non-network providers. However, certain preventive services are not covered services for TRICARE Prime or Select beneficiaries unless obtained from network providers. Additionally, TRICARE Prime beneficiaries are required to obtain services in accordance with the rules and procedures of Prime to avoid point-of-service charges.

➢ Enrollment fees and deductibles are listed in the tables as individual/family, indicating the dollar amounts applicable per individual or per family.

➢ The criteria for fees associated with High Value Primary Care Outpatient Care and High Value Specialty Outpatient Care are under development but will be designed to encourage beneficiaries to receive health care services from high-value providers as highlighted in the contractor's network provider directory. When finalized, the fees will be made available at *www.health.mil/rates.*

➢ Inpatient subsistence refers to the rate charged for inpatient care obtained in a military treatment facility.

➢ ''COLA'' is the cost-of-living adjustment for retired pay under 10 U.S.C. 1401a by which certain fees are required to be annually indexed.

➢ ''<'' means less than; ≤ means less than or equal to.

TABLE 1—TRICARE SELECT AND TRICARE PRIME COST SHARING FOR ACTIVE DUTY FAMILY MEMBERS FOR CALENDAR YEAR 2018

	Select Group A ADFMs	Select Group B ADFMs	Prime Group A ADFMs	Prime Group B ADFMs
Annual Enrollment	$0	$0	$0	$0
Annual Deductible	E1–E4: $50/$100; E5 & above: $150/$300.	E1–E4: $50/$100; E5 & above: $150/$300.	0	0
Annual Catastrophic Cap	$1,000	$1,000	1,000	1,000
Preventive Care Outpatient Visit.	$0	$0	0	0
Primary Care Outpatient Visit	Fixed fee to = 15% of average allowable amount IN; 20% OON.	$15 primary care IN; 20% OON.	0	0
Specialty Care Outpatient Visit	Fixed fee to = 15% of average allowable amount IN; 20% OON.	$25 specialty care IN; 20% OON.	0	0
High-Value Primary Care Outpatient Visit.	Under Development; Less than normal primary care amount.	Under Development; Less than normal primary care amount.	0	0
High-Value Specialty Care Outpatient Visit.	Under Development; Less than normal primary care amount.	Under Development; Less than normal primary care amount.	0	0
Emergency Room Visit	Fixed fee to = 15% of average allowable amount IN; 20% OON.	$40 IN; 20% OON	0	0
Urgent Care Center	Same as primary care outpatient amount IN; 20% OON.	$20 IN; 20% OON	0	0
Ambulatory Surgery	$25	$25 IN; 20% OON	0	0
Ambulance Service (not including air).	Fixed fee to = 15% of average allowable amount IN; 20% OON.	$15 IN; 20% OON	0	0
Durable Medical Equipment	15% IN; 20% OON	10% IN; 20% OON	0	0
Inpatient Hospital Admission	Subsistence charge/day, minimum $25/admission.	$60/admission IN; 20% OON	0	0
Inpatient Skilled Nursing/ Rehab Facility.	Subsistence charge/day, minimum $25/admission.	$25/day IN; $50/day OON	0	0

TABLE 2—TRICARE SELECT AND TRICARE PRIME COST SHARING FOR RETIREE FAMILIES FOR CALENDAR YEAR 2018

	Select Group A Retirees	Select Group B Retirees	Prime Group A Retirees	Prime Group B Retirees
Annual Enrollment	$0 until 2021; $150/$300 in 2021 +COLA?	$450/$900	FY17 amount ($282.60/ $565.20) +COLA.	$350/$700.
Annual Deductible	$150/$300	$150/$300 IN; $300/$600 OON	$0	$0.
Annual Catastrophic Cap	$3,000 until 2021; $3,500 in 2021.	$3,500	$3,000	$3,500.
Preventive Care Visit	$0	$0	$0	$0.
Primary Care Outpatient Visit	Fixed fee that = 20% of average allowable amount IN; 25% OON.	$25 primary IN; 25% OON	TBD, ≤$20 primary	$20 primary.
Specialty Care Outpatient Visit	Fixed fee that = 20% of average allowable amount IN; 25% OON.	$40 specialty IN; 25% OON	TBD, ≤$30 specialty	$30 specialty.
High Value Primary Care OP Visit.	Under Development; <normal primary care amount.	Under Development; <normal primary care amount.	Under Development; <normal primary care amount.	Under Development; <normal primary care amount.
High Value Specialty Care OP Visit.	Under Development; <normal specialty care amount.	Under Development; <normal specialty care amount.	Under Development; <normal specialty care amount.	Under Development; <normal specialty care amount.
Emergency Room Visit	Fixed fee that = 20% of average allowable amount IN; 25% OON.	$80 IN; 25% OON	TBD, ≤$60	$60.
Urgent Care Center	Same as primary care outpatient amount IN; 25% OON.	$40 IN; 25% OON	TBD, ≤$30	$30.
Ambulatory Surgery	20% IN; 25% OON	$95 IN; 25% OON	TBD, ≤$60	$60.
Ambulance Service (not including air).	Fixed fee that = 20% of average allowable amount IN; 25% OON.	$60 IN; 25% OON	TBD, ≤$40	$40.
Durable Med. Equip	20% IN; 25% OON	20% IN; 25% OON	20%	20%.
Inpatient Admission	$250/day up to 25% hosp. charge + 20% separately billed services IN; 25% OON.	$175/admission IN; 25% OON	TBD, ≤$150/admission	$150/admission.
Inpatient Skilled Nursing/ Rehab Admission.	$250/day up to 25% hospital charge + 20% separately billed services IN; 25% OON.	$50/day IN; Lesser of $300/ day or 20% OON.	TBD, ≤$30/day	$30/day.

III. Regulatory Procedures

Public Comments Invited

This is being issued as an interim final rule in order to comply with statutory specifications regarding effective dates of changes to TRICARE as a health care entitlement program. For example, the change from a fiscal year-based TRICARE plan year for purposes of enrollment fees, deductibles, and catastrophic caps to a calendar year-based TRICARE plan year requires that this regulation be in place by October 1, 2017. Many other changes

must be in place by January 1, 2018, including the operation of TRICARE Select to replace TRICARE Extra and TRICARE Standard, which DoD no longer has authority to operate as of that date. In view of the statutory effective dates of the substantial changes in TRICARE, the Department finds that obtaining public comment in advance of issuing this rule is impracticable, unnecessary, and contrary to the public interest. Nonetheless, DoD invites public comments on this rule and is committed to considering all comments and issuing a final rule as soon as practicable.

Executive Order (E.O.) 13771, ''Reducing Regulation and Controlling Regulatory Costs''

E.O. 13771 seeks to control costs associated with the government imposition of private expenditures required to comply with Federal regulations and to reduce regulations that impose such costs. Consistent with the analysis of transfer payments under OMB Circular A–4, this interim final rule does not involve regulatory costs subject to E.O. 13771.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim final rule has been designated ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB).

Congressional Review Act, 5 U.S.C. 804(2)

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100 million or more or have certain other impacts. This interim final rule is not a major rule under the Congressional Review Act.

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA), (5 U.S.C. 601)

The Regulatory Flexibility Act requires that each Federal agency analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. This interim final rule is not an economically significant regulatory action, and it will not have a significant impact on a substantial number of small entities. Therefore, this rule is not subject to the requirements of the RFA.

Public Law 104–4, Sec. 202, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $140 million. This interim final rule will not mandate any requirements for state, local, or tribal governments or the private sector.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rulemaking does not contain a ''collection of information'' requirement, and will not impose additional information collection requirements on the public under Public Law 96–511, ''Paperwork Reduction Act'' (*44 U.S.C. Chapter 35*).

Executive Order 13132, ''Federalism''

This interim final rule has been examined for its impact under E.O. 13132, and it does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of powers and responsibilities among the various levels of Government. Therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Mental health, Mental health parity, Military personnel.

For the reasons stated in the preamble, the Department of Defense amends 32 CFR part 199 as set forth below:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. In § 199.2, paragraph (b) is amended by:
■ a. Revising the definitions of ''Basic program,'' ''Deductible,'' ''Deductible certificate,'' ''Former member,'' and ''Member.''
■ b. Adding the definitions of ''Program year'' and ''Retired category'' in alphabetical order.
■ c. Revising the definition of ''Retiree.''
■ d. Adding the definition of ''TRICARE Extra'' in alphabetical order.
■ e. Removing the definition of ''TRICARE extra plan.''
■ f. Adding the definition of ''TRICARE for Life'' and ''TRICARE Prime'' in alphabetical order.
■ g. Removing the definition of ''TRICARE prime plan.''
■ h. Revising the definitions of ''TRICARE program'' and ''TRICARE Retired Reserve.''
■ i. Adding the definitions of ''TRICARE Select'' and ''TRICARE Standard'' in alphabetical order.
■ j. Removing the definition of ''TRICARE standard plan.''

The revisions and additions read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Basic program. The primary medical benefits set forth in § 199.4, generally referred to as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) as authorized under chapter 55 of title 10 United States Code, were made available to eligible beneficiaries under this part.

* * * * *

Deductible. Payment by an individual beneficiary or family of a specific first dollar amount of the TRICARE allowable amount for otherwise covered outpatient services or supplies obtained in any program year. The dollar amount of deductible per individual or family is calculated as specified by law.

Deductible certificate. A statement issued to the beneficiary (or sponsor) by a TRICARE contractor certifying to deductible amounts satisfied by a beneficiary for any applicable program year.

* * * * *

Former member. An individual who is eligible for, or entitled to, retired pay, at age 60, for non-Regular service in

accordance with chapter 1223, title 10, United States Code but who has been discharged and who maintains no military affiliation. These former members, at age 60, and their eligible dependents are entitled to medical care, commissary, exchange, and MWR privileges. Under age 60, they and their eligible dependents are entitled to commissary, exchange, and MWR privileges only.

* * * * *

Member. An individual who is affiliated with a Service, either an active duty member, Reserve member, active duty retired member, or Retired Reserve member. Members in a retired status are not former members. Also referred to as the sponsor.

* * * * *

Program year. The appropriate year (*e.g.,* calendar year, fiscal year, rolling 12-month period, etc.) specified in the administration of TRICARE programs for application of unique requirements or limitations (*e.g.,* enrollment fees, deductibles, catastrophic loss protection, etc.) on covered health care services obtained or provided during the designated time period.

* * * * *

Retired category. Retirees and their family members who are beneficiaries covered by 10 U.S.C. 1086(c), other than Medicare-eligible beneficiaries as described in 10 U.S.C. 1086(d).

Retiree. For ease of reference in this part only, and except as otherwise specified in this part, the term means a member or former member of a Uniformed Service who is entitled to retired, retainer, or equivalent pay based on duty in a Uniformed Service.

* * * * *

TRICARE Extra. The preferred-provider option of the TRICARE program made available prior to January 1, 2018, under which TRICARE Standard beneficiaries may obtain discounts on cost sharing as a result of using TRICARE network providers.

TRICARE for Life. The Medicare wraparound coverage option of the TRICARE program made available to an eligible beneficiary by reason of 10 U.S.C. 1086(d).

* * * * *

TRICARE Prime. The managed care option of the TRICARE program established under § 199.17.

TRICARE program. The program established under § 199.17.

* * * * *

TRICARE Retired Reserve. The program established under 10 U.S.C. 1076e and § 199.25.

* * * * *

TRICARE Select. The self-managed, preferred-provider network option under the TRICARE Program established by 10 U.S.C. 1075 and § 199.17 to replace TRICARE Extra and Standard after December 31, 2017.

TRICARE Standard. The TRICARE program made available prior to January 1, 2018, under which the basic program of health care benefits generally referred to as CHAMPUS was made available to eligible beneficiaries under this part.

* * * * *

■ 3. Section 199.4 is amended by:
■ a. Adding paragraph (c)(1)(iii);
■ b. Revising paragraph (d)(3)(iii);
■ c. Adding paragraph (d)(3)(vi)(D);
■ d. Revising paragraph (e)(28)(iv);
■ e. Adding paragraph (e)(28)(v);
■ f. Removing the words ''fiscal year'' everywhere they appear and adding in their place the words ''calendar year'' in paragraphs (f)(2) through (4) and (10);
■ g. Adding paragraph (f)(13);
■ h. Revising paragraph (g)(39) introductory text and adding paragraph (g)(39)(v).
■ i. Revising paragraph (g)(57).

The revisions and additions read as follows:

§ 199.4 Basic program benefits.

* * * * *

(c) * * *

(1) * * *

(iii) *Telehealth services.* Health care services covered by TRICARE and provided through the use of telehealth modalities are covered services to the same extent as if provided in person at the location of the patient if those services are medically necessary and appropriate for such modalities. The Director will establish special procedures for payment for such services. Additionally, where appropriate, in order to incentive the use of telehealth services, the Director may modify the otherwise applicable beneficiary cost-sharing requirements in paragraph (f) of this section which otherwise apply.

* * * * *

(d) * * *

(3) * * *

(iii) *Medical supplies and dressings (consumables)*—(A) *In general.* In general, medical supplies and dressings (consumables) are those that do not withstand prolonged, repeated use. Such items must be related directly to an appropriate and verified covered medical condition of the specific beneficiary for whom the item was purchased and obtained from a medical supply company, a pharmacy, or authorized institutional provider. Examples of covered medical supplies and dressings are disposable syringes for a known diabetic, colostomy sets, irrigation sets, and elastic bandages. An external surgical garment specifically designed for use follow a mastectomy is considered a medical supply item.

Note 1 to paragraph (d)(3)(iii)(A): Generally, the allowable charge of a medical supply item will be under $100. Any item over this amount must be reviewed to determine whether it would qualify as a DME item. If it is, in fact, a medical supply item and does not represent an excessive charge, it can be considered for benefits under paragraph (d)(3)(iii) of this section.

(B) *Medically necessary food and medical equipment and supplies necessary to administer such food (other than durable medical equipment and supplies) when prescribed for dietary management of a covered disease or condition.* (*1*) Medically necessary food, including a low protein modified food product or an amino acid preparation product, may be covered when:

(*i*) Furnished pursuant to the prescription, order, or recommendation of a TRICARE authorized provider acting within the provider's scope of license/certificate of practice, for the dietary management of a covered disease or condition;

(*ii*) Is a specifically formulated and processed product (as opposed to a naturally occurring foodstuff used in its natural state) for the partial or exclusive feeding of an individual by means of oral intake or enteral feeding by tube;

(*iii*) Is intended for the dietary management of an individual who, because of therapeutic or chronic medical needs, has limited or impaired capacity to ingest, digest, absorb, or metabolize ordinary foodstuffs or certain nutrients, or who has other special medically determined nutrient requirements, the dietary management of which cannot be achieved by the modification of the normal diet alone;

(*iv*) Is intended to be used under medical supervision, which may include in a home setting; and

(*v*) Is intended only for an individual receiving active and ongoing medical supervision under which the individual requires medical care on a recurring basis for, among other things, instructions on the use of the food.

(*2*) Medically necessary food does not include:

(*i*) Food taken as part of an overall diet designed to reduce the risk of a disease or medical condition or as weight-loss products, even if the food is recommended by a physician or other health care professional;

(*ii*) Food marketed as gluten-free for the management of celiac disease or non-celiac gluten sensitivity;

(*iii*) Food marketed for the management of diabetes; or

(*iv*) Such other products as the Director, Defense Health Agency determines appropriate.

(*3*) Covered disease or condition under paragraph (d)(3)(iii)(B) of this section means:

(*i*) Inborn errors of metabolism;

(*ii*) Medical conditions of malabsorption;

(*iii*) Pathologies of the alimentary tract or the gastrointestinal tract;

(*iv*) A neurological or physiological condition; and

(*v*) Such other diseases or conditions the Director, Defense Health Agency determines appropriate.

* * * * *

(vi) * * *

(D) Medically necessary vitamins used for the management of a covered disease or condition pursuant to a prescription, order, or recommendation of a TRICARE authorized provider acting within the provider's scope of license/certificate of practice. For purposes of this paragraph (d)(3)(vi)(D), the term ''covered disease or condition'' means:

(*1*) Inborn errors of metabolism;

(*2*) Medical conditions of malabsorption;

(*3*) Pathologies of the alimentary tract or the gastrointestinal tract;

(*4*) A neurological or physiological condition;

(*5*) Pregnancy in relation to prenatal vitamins, with the limitation the prenatal vitamins that require a prescription in the United States may be covered for prenatal care only;

(*6*) Such other disease or conditions the Director, Defense Health Agency determines appropriate.

* * * * *

(e) * * *

(28) * * *

(iv) Health promotion and disease prevention visits (which may include all of the services provided pursuant to § 199.17(f)(2)) for beneficiaries 6 years of age or older may be provided in connection with immunizations and cancer screening examinations authorized by paragraphs (e)(28)(i) and (ii) of this section).

(v) Breastfeeding support, supplies (including breast pumps and associated equipment), and counseling.

* * * * *

(f) * * *

(13) *Special transition rule for the last quarter of calendar year 2017.* In order to transition deductibles and catastrophic caps from a fiscal year basis to a calendar year basis, the deductible amount and the catastrophic cap amount specified in paragraph (f) of this section will be applicable to the 15-month period of October 1, 2016 through December 31, 2017.

(g) * * *

(39) *Counseling.* Educational, vocational, non-medical nutritional counseling, counseling for socioeconomic purposes, stress management, and/or lifestyle modification purposes, except the following are not excluded:

* * * * *

(v) Medical nutritional therapy (also referred to as medical nutritional counseling) required in the administration of the medically necessary foods, services and supplies authorized in paragraph (d)(3)(iii)(B) of this section, medically necessary vitamins authorized in paragraph (d)(3)(vi)(D) of this section, or when medically necessary for other authorized covered services.

* * * * *

(57) *Food, food substitutes.* Food, food substitutes, vitamins, or other nutritional supplements, including those related to prenatal care, except as authorized in paragraphs (d)(3)(iii)(B) and (d)(3)(vi)(D) of this section.

* * * * *

■ 4. Section 199.5 is amended by:

■ a. Removing the words ''fiscal year'' everywhere they appear and adding in their place the words ''program year'' in paragraphs (c)(7)(iii), (f)(3), (g)(2)(i), and (h)(3)(v)(A); and

■ b. Adding paragraph (a)(3).

The addition reads as follows:

§ 199.5 TRICARE Extended Health Care Option (ECHO).

(a) * * *

(3) The Government's cost-share for ECHO or ECHO home health benefits during any program year is limited as stated in this section. In order to transition the program year from a fiscal year to a calendar year basis, the Government's annual cost-share limitation specified in paragraph (f) of this section shall be prorated for the last quarter of calendar year 2018 as authorized by 10 U.S.C. 1079(f)(2)(A).

* * * * *

■ 5. Section 199.6 is amended by revising paragraphs (c)(3)(iii)(L) and (M) to read as follows:

§ 199.6 TRICARE-authorized providers.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(L) *Nutritionist.* The nutritionist must be licensed by the State in which the care is provided and must be under the supervision of a physician who is overseeing the episode of treatment or the covered program of services.

(M) *Registered dietician.* The dietician must be licensed by the State in which the care is provided and must be under the supervision of a physician who is overseeing the episode of treatment or the covered program of services.

* * * * *

§ 199.7 [Amended]

■ 6. Section 199.7(a)(6) is amended by removing the words ''fiscal year'' everywhere they appear and adding in their place the words ''calendar year''.

§ 199.8 [Amended]

■ 7. Section 199.8(d)(1)(v) is amended by removing ''Sec. 199.4(f)(10)'' and adding in its place ''§ 199.4(f)(10)'' and removing the words ''fiscal year'' and adding in their place the words ''calendar year''.

■ 8. Section 199.11 is amended by revising paragraph (a) to read as follows:

§ 199.11 Overpayments recovery.

(a) *General.* Actions to recover overpayments arise when the government has a right to recover money, funds, or property from any person, partnership, association, corporation, governmental body or other legal entity, foreign or domestic, except another Federal agency, because of an erroneous payment of benefits under both CHAMPUS and the TRICARE program under this part. The term ''Civilian Health and Medical Program of the Uniformed Services'' (CHAMPUS) is defined in 10 U.S.C. 1072(2), referred to as the CHAMPUS basic program. Prior to January 1, 2018, the term ''TRICARE program'' referred to the triple-option of health benefits known as TRICARE Prime, TRICARE Extra, and TRICARE Standard. Specifically, TRICARE Standard was the TRICARE program under which the basic program of health care benefits generally referred to as CHAMPUS was made available to eligible beneficiaries under this Part 199. Effective January 1, 2018, the term ''TRICARE program'' is defined in 10 U.S.C. 1072(2) and includes TRICARE Prime, TRICARE Select and TRICARE for Life. It is the purpose of this section to prescribe procedures for investigation, determination, assertion, collection, compromise, waiver and termination of claims in favor of the United States for erroneous benefit payments arising out of the administration CHAMPUS and the TRICARE program. For the purpose of this section, references herein to TRICARE beneficiaries, claims, benefits,

payments, or appeals shall include CHAMPUS beneficiaries, claims, benefits, payments, or appeals. A claim against several joint debtors arising from a single incident or transaction is considered one claim. The Director, or a designee, may pursue collection against all joint debtors and is not required to allocate the burden of payment between debtors.

* * * * *

■ 9. Section 199.17 is revised to read as follows.

§ 199.17 TRICARE program.

(a) *Establishment.* The TRICARE program is established for the purpose of implementing a comprehensive managed health care program for the delivery and financing of health care services in the Military Health System.

(1) *Purpose.* The TRICARE program implements a number of improvements primarily through modernized managed care support contracts that include special arrangements with civilian sector health care providers and better coordination between military medical treatment facilities (MTFs) and these civilian providers to deliver an integrated, health care delivery system that provides beneficiaries with access to high quality healthcare. Implementation of these improvements, to include enhanced access, improved health outcomes, increased efficiencies and elimination of waste, in addition to improving and maintaining operational medical force readiness, includes adoption of special rules and procedures not ordinarily followed under CHAMPUS or MTF requirements. This section establishes those special rules and procedures.

(2) *Statutory authority.* Many of the provisions of this section are authorized by statutory authorities other than those which authorize the usual operation of the CHAMPUS program, especially 10 U.S.C. 1079 and 1086. The TRICARE program also relies upon other available statutory authorities, including 10 U.S.C. 1075 (TRICARE Select), 10 U.S.C. 1075a (TRICARE Prime cost sharing), 10 U.S.C. 1095f (referrals and pre-authorizations under TRICARE Prime), 10 U.S.C. 1099 (health care enrollment system), 10 U.S.C. 1097 (contracts for medical care for retirees, dependents and survivors: Alternative delivery of health care), and 10 U.S.C. 1096 (resource sharing agreements).

(3) *Scope of the program.* The TRICARE program is applicable to all the uniformed services. TRICARE Select and TRICARE-for-Life shall be available in all areas, including overseas as authorized in paragraph (u) of this section. The geographic availability of TRICARE Prime is generally limited as provided in this section. The Assistant Secretary of Defense (Health Affairs) may also authorize modifications to TRICARE program rules and procedures as may be appropriate to the area involved.

(4) *Rules and procedures affected.* Much of this section relates to rules and procedures applicable to the delivery and financing of health care services provided by civilian providers outside military treatment facilities. This section provides that certain rules, procedures, rights and obligations set forth elsewhere in this part (and usually applicable to CHAMPUS) are different under the TRICARE program. To the extent that TRICARE program rules, procedures, rights and obligations set forth in this section are not different from or otherwise in conflict with those set forth elsewhere in this part as applicable to CHAMPUS, the CHAMPUS provisions are incorporated into the TRICARE program. In addition, some rules, procedures, rights and obligations relating to health care services in military treatment facilities are also different under the TRICARE program. In such cases, provisions of this section take precedence and are binding.

(5) *Implementation based on local action.* The TRICARE program is not automatically implemented in all respects in all areas where it is potentially applicable. Therefore, not all provisions of this section are automatically implemented. Rather, implementation of the TRICARE program and this section requires an official action by the Director, Defense Health Agency. Public notice of the initiation of portions of the TRICARE program will be achieved through appropriate communication and media methods and by way of an official announcement by the Director identifying the military medical treatment facility catchment area or other geographical area covered.

(6) *Major features of the TRICARE program.* The major features of the TRICARE program, described in this section, include the following:

(i) *Beneficiary categories.* Under the TRICARE program, health care beneficiaries are generally classified into one of several categories:

(A) Active duty members, who are covered by 10 U.S.C. 1074(a).

(B) Active duty family members, who are beneficiaries covered by 10 U.S.C. 1079 (also referred to in this section as ''active duty family category'').

(C) Retirees and their family members (also referred to in this section as ''retired category''), who are beneficiaries covered by 10 U.S.C. 1086(c) other than those beneficiaries eligible for Medicare Part A.

(D) Medicare eligible retirees and Medicare eligible retiree family members who are beneficiaries covered by 10 U.S.C. 1086(d) as each become individually eligible for Medicare Part A and enroll in Medicare Part B.

(E) Military treatment facility (MTF) only beneficiaries are beneficiaries eligible for health care services in military treatment facilities, but not eligible for a TRICARE plan covering non-MTF care.

(ii) *Health plans available.* The major TRICARE health plans are as follows:

(A) *TRICARE Prime.* ''TRICARE Prime'' is a health maintenance organization (HMO)-like program. It generally features use of military treatment facilities and substantially reduced out-of-pocket costs for care provided outside MTFs. Beneficiaries generally agree to use military treatment facilities and designated civilian provider networks and to follow certain managed care rules and procedures. The primary purpose of TRICARE Prime is to support the effective operation of an MTF, which exists to support the medical readiness of the armed forces and the readiness of medical personnel. TRICARE Prime will be offered in areas where the Director determines that it is appropriate to support the effective operation of one or more MTFs.

(B) *TRICARE Select.* ''TRICARE Select'' is a self-managed, preferred provider organization (PPO) program. It allows beneficiaries to use the TRICARE provider civilian network, with reduced out-of-pocket costs compared to care from non-network providers, as well as military treatment facilities (where they exist and when space is available). TRICARE Select enrollees will not have restrictions on their freedom of choice with respect to authorized health care providers. However, when a TRICARE Select beneficiary receives services covered under the basic program from an authorized health care provider who is not part of the TRICARE provider network that care is covered by TRICARE but is subject to higher cost sharing amounts for ''out-of-network'' care. Those amounts are the same as under the basic program under § 199.4.

(C) *TRICARE for Life.* ''TRICARE for Life'' is the Medicare wraparound coverage plan under 10 U.S.C. 1086(d). Rules applicable to this plan are unaffected by this section; they are generally set forth in §§ 199.3 (Eligibility), 199.4 (Basic Program Benefits), and 199.8 (Double Coverage).

(D) *TRICARE Standard.* ''TRICARE Standard'' generally referred to the basic CHAMPUS program of benefits under § 199.4. While the law required termination of TRICARE Standard as a distinct TRICARE plan December 31, 2017, the CHAMPUS basic program benefits under § 199.4 continues as the baseline of benefits common to the TRICARE Prime and TRICARE Select plans.

(iii) *Comprehensive enrollment system.* The TRICARE program includes a comprehensive enrollment system for all categories of beneficiaries except TRICARE-for-Life beneficiaries. When eligibility for enrollment for TRICARE Prime and/or TRICARE Select exists, a beneficiary must enroll in one of the plans. Refer to paragraph (o) of this section for TRICARE program enrollment procedures.

(7) *Preemption of State laws.* (i) Pursuant to 10 U.S.C. 1103 the Department of Defense has determined that in the administration of 10 U.S.C. chapter 55, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including but not limited to the assurance of uniform national health programs for military families and the operation of such programs at the lowest possible cost to the Department of Defense, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States.

(ii) Based on the determination set forth in paragraph (a)(7)(i) of this section, any State or local law relating to health insurance, prepaid health plans, or other health care delivery or financing methods is preempted and does not apply in connection with TRICARE regional contracts. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to the TRICARE regional contracts. (However, the Department of Defense may by contract establish legal obligations of the part of TRICARE contractors to conform with requirements similar or identical to requirements of State or local laws or regulations).

(iii) The preemption of State and local laws set forth in paragraph (a)(7)(ii) of this section includes State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods, within the meaning of the statutes identified in paragraph (a)(7)(i) of this section. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health and dental services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

(b) *TRICARE Prime and TRICARE Select health plans in general.* The two primary plans for beneficiaries in the active duty family category and the retired category (which does not include most Medicare-eligible retirees/dependents) are TRICARE Prime and TRICARE Select. This paragraph (b) further describes the TRICARE Prime and TRICARE Select health plans.

(1) *TRICARE Prime.* TRICARE Prime is a managed care option that provides enhanced medical services to beneficiaries at reduced cost-sharing amounts for beneficiaries whose care is managed by a designated primary care manager and provided by an MTF or network provider. TRICARE Prime is offered in a location in which an MTF is located (other than a facility limited to members of the armed forces) that has been designated by the Director as a Prime Service Area. In addition, where TRICARE Prime is offered it may be limited to active duty family members if the Director determines it is not practicable to offer TRICARE Prime to retired category beneficiaries. TRICARE Prime is not offered in areas where the Director determines it is impracticable. If TRICARE Prime is not offered in a geographical area, certain active duty family members residing in the area may be eligible to enroll in TRICARE Prime Remote program under paragraph (g) of this section.

(2) *TRICARE Select.* TRICARE Select is the self-managed option under which beneficiaries may receive authorized basic program benefits from any TRICARE authorized provider. The TRICARE Select health care plan also provides enhanced program benefits to beneficiaries with access to a preferred-provider network with broad geographic availability within the United States at reduced out-of-pocket expenses. However, when a beneficiary receives services from an authorized health care provider who is not part of the TRICARE provider network, only basic program benefits (not enhanced Select care) are covered by TRICARE and the beneficiary is subject to higher cost sharing amounts for ''out-of-network'' care. Those amounts are the same as under the basic program under § 199.4.

(c) *Eligibility for enrollment in TRICARE Prime and TRICARE Select.* Beneficiaries in the active duty family category and the retired category are eligible to enroll in TRICARE Prime and/or TRICARE Select as outlined in this paragraph (c). A retiree or retiree family member who becomes eligible for Medicare Part A is not eligible to enroll in TRICARE Select; however, as provided in this paragraph (c), some Medicare eligible retirees/family members may be allowed to enroll in TRICARE Prime where available. In general, when a retiree or retiree family member becomes individually eligible for Medicare Part A and enrolls in Medicare Part B, he/she is automatically eligible for TRICARE-for-Life and is required to enroll in the Defense Enrollment Eligibility Reporting System (DEERS) to verify eligibility. Further, some rules and procedures are different for dependents of active duty members and retirees, dependents, and survivors.

(1) *Active duty members.* Active duty members are required to enroll in Prime where it is offered. Active duty members shall have first priority for enrollment in Prime.

(2) *Dependents of active duty members.* Beneficiaries in the active duty family member category are eligible to enroll in Prime (where offered) or Select.

(3) *Survivors of deceased members.* (i) The surviving spouse of a member who dies while on active duty for a period of more than 30 days is eligible to enroll in Prime (where offered) or Select for a 3 year period beginning on the date of the member's death under the same rules and provisions as dependents of active duty members.

(ii) A dependent child or unmarried person (as described in § 199.3(b)(2)(ii) or (iv)) of a member who dies while on active duty for a period of more than 30 days whose death occurred on or after October 7, 2001, is eligible to enroll in Prime (where offered) or Select and is subject to the same rules and provisions of dependents of active duty members for a period of three years from the date the active duty sponsor dies or until the surviving eligible dependent:

(A) Attains 21 years of age; or

(B) Attains 23 years of age or ceases to pursue a full-time course of study prior to attaining 23 years of age, if, at 21 years of age, the eligible surviving dependent is enrolled in a full-time course of study in a secondary school or

in a full-time course of study in an institution of higher education approved by the Secretary of Defense and was, at the time of the sponsor's death, in fact dependent on the member for over one-half of such dependent's support.

(4) *Retirees, dependents of retirees, and survivors (other than survivors of deceased members covered under paragraph (c)(3) of this section).* All retirees, dependents of retirees, and survivors who are not eligible for Medicare Part A are eligible to enroll in Select. Additionally, retirees, dependents of retirees, and survivors who are not eligible for Medicare Part A based on age are also eligible to enroll in TRICARE Prime in locations where it is offered and where an MTF has, in the judgment of the Director, a significant number of health care providers, including specialty care providers, and sufficient capability to support the efficient operation of TRICARE Prime for projected retired beneficiary enrollees in that location.

(d) *Health benefits under TRICARE Prime*—(1) *Military treatment facility (MTF) care*—(i) *In general.* All participants in Prime are eligible to receive care in military treatment facilities. Participants in Prime will be given priority for such care over other beneficiaries. Among the following beneficiary groups, access priority for care in military treatment facilities where TRICARE is implemented as follows:

(A) Active duty service members;

(B) Active duty service members' dependents and survivors of service members who died on active duty, who are enrolled in TRICARE Prime;

(C) Retirees, their dependents and survivors, who are enrolled in TRICARE Prime;

(D) Active duty service members' dependents and survivors of deceased members, who are not enrolled in TRICARE Prime; and

(E) Retirees, their dependents and survivors who are not enrolled in TRICARE Prime. For purposes of this paragraph (d)(1), survivors of members who died while on active duty are considered as among dependents of active duty service members.

(ii) *Special provisions.* Enrollment in Prime does not affect access priority for care in military treatment facilities for several miscellaneous beneficiary groups and special circumstances. Those include Secretarial designees, NATO and other foreign military personnel and dependents authorized care through international agreements, civilian employees under workers' compensation programs or under safety programs, members on the Temporary Disability Retired List (for statutorily required periodic medical examinations), members of the reserve components not on active duty (for covered medical services), military prisoners, active duty dependents unable to enroll in Prime and temporarily away from place of residence, and others as designated by the Assistant Secretary of Defense (Health Affairs). Additional exceptions to the normal Prime enrollment access priority rules may be granted for other categories of individuals, eligible for treatment in the MTF, whose access to care is necessary to provide an adequate clinical case mix to support graduate medical education programs or readiness-related medical skills sustainment activities, to the extent approved by the ASD(HA).

(2) *Non-MTF care for active duty members.* Under Prime, non-MTF care needed by active duty members continues to be arranged under the supplemental care program and subject to the rules and procedures of that program, including those set forth in § 199.16.

(3) *Civilian sector Prime benefits.* Health benefits for Prime enrollees for care received from civilian providers are those under § 199.4 and the additional benefits identified in paragraph (f) of this section.

(e) *Health benefits under the TRICARE Select plan*—(1) *Civilian sector care.* The health benefits under TRICARE Select for enrolled beneficiaries received from civilian providers are those under § 199.4, and, in addition, those in paragraph (f) of this section when received from a civilian network provider.

(2) *Military treatment facility (MTF) care.* All TRICARE Select enrolled beneficiaries continue to be eligible to receive care in military treatment facilities on a space available basis.

(f) *Benefits under TRICARE Prime and TRICARE Select*—(1) *In general.* Except as specifically provided or authorized by this section, all benefits provided, and benefit limitations established, pursuant to this part, shall apply to TRICARE Prime and TRICARE Select.

(2) *Preventive care services.* Certain preventive care services not normally provided as part of basic program benefits under § 199.4 are covered benefits when provided to Prime or Select enrollees by providers in the civilian provider network. Such additional services are authorized under 10 U.S.C. 1097, including preventive care services not part of the entitlement under 10 U.S.C. 1074d and services that would otherwise be excluded under 10 U.S.C. 1079(a)(10). Other authority for such additional services includes section 706 of the National Defense Authorization Act for Fiscal Year 2017. The specific set of such services shall be established by the Director and announced annually before the open season enrollment period. Standards for preventive care services shall be developed based on guidelines from the U.S. Department of Health and Human Services. Such standards shall establish a specific schedule, including frequency or age specifications for services that may include, but are not limited to:

(i) Laboratory and imaging tests, including blood lead, rubella, cholesterol, fecal occult blood testing, and mammography;

(ii) Cancer screenings (including cervical, breast, lung, prostate, and colon cancer screenings);

(iii) Immunizations;

(iv) Periodic health promotion and disease prevention exams;

(v) Blood pressure screening;

(vi) Hearing exams;

(vii) Sigmoidoscopy or colonoscopy;

(viii) Serologic screening; and

(ix) Appropriate education and counseling services. The exact services offered shall be established under uniform standards established by the Director.

(3) *Treatment of obesity.* Under the authority of 10 U.S.C. 1097 and sections 706 and 729 of the National Defense Authorization Act for Fiscal Year 2017, notwithstanding 10 U.S.C. 1079(a)(10), treatment of obesity is covered under TRICARE Prime and TRICARE Select even if it is the sole or major condition treated. Such services must be provided by a TRICARE network provider and be medically necessary and appropriate in the context of the particular patient's treatment.

(4) *High value services.* Under the authority of 10 U.S.C. 1097 and other authority, including sections 706 and 729 of the National Defense Authorization Act for Fiscal Year 2017, for purposes of improving population-based health outcomes and incentivizing medical intervention programs to address chronic diseases and other conditions and healthy lifestyle interventions, the Director may waive or reduce cost sharing requirements for TRICARE Prime and TRICARE Select enrollees for care received from network providers for certain health care services designated for this purpose. The specific services designated for this purpose will be those the Director determines provide especially high value in terms of better health outcomes. The specific services affected for any plan year will be announced by the Director prior to the

open season enrollment period for that plan year. Services affected by actions of the Director under paragraph (f)(5) of this section may be associated with actions taken for high value medications under § 199.21(j)(3) for select pharmaceutical agents to be cost-shared at a reduced or zero dollar rate.

(5) *Other services.* In addition to services provided pursuant to paragraphs (f)(2) through (4) of this section, other benefit enhancements may be added and other benefit restrictions may be waived or relaxed in connection with health care services provided to TRICARE Prime and TRICARE Select enrollees. Any such other enhancements or changes must be approved by the Director based on uniform standards.

(g) *TRICARE Prime Remote for Active Duty Family Members*—(1) *In general.* In geographic areas in which TRICARE Prime is not offered and in which eligible family members reside, there is offered under 10 U.S.C. 1079(p) TRICARE Prime Remote for Active Duty Family Members as an enrollment option. TRICARE Prime Remote for Active Duty Family Members (TPRADFM) will generally follow the rules and procedures of TRICARE Prime, except as provided in this paragraph (g) and otherwise except to the extent the Director determines them to be infeasible because of the remote area.

(2) *Active duty family member.* For purposes of this paragraph (g), the term ''active duty family member'' means one of the following dependents of an active duty member of the Uniformed Services:

(i) Spouse, child, or unmarried person, as defined in § 199.3(b)(2)(i), (ii), or (iv);

(ii) For a 3-year period, the surviving spouse of a member who dies while on active duty for a period of more than 30 days whose death occurred on or after October 7, 2001; and

(iii) The surviving dependent child or unmarried person, as defined in § 199.3(b)(2)(ii) or (iv), of a member who dies while on active duty for a period of more than 30 days whose death occurred on or after October 7, 2001. Active duty family member status is for a period of 3 years from the date the active duty sponsor dies or until the surviving eligible dependent:

(A) Attains 21 years of age; or

(B) Attains 23 years of age or ceases to pursue a full-time course of study prior to attaining 23 years of age, if, at 21 years of age, the eligible surviving dependent is enrolled in a full-time course of study in a secondary school or in a full-time course of study in an institution of higher education approved by the Secretary of Defense and was, at the time of the sponsor's death, in fact dependent on the member for over one-half of such dependent's support.

(3) *Eligibility.* (i) An active duty family member is eligible for TRICARE Prime Remote for Active Duty Family Members if he or she is eligible for CHAMPUS and, on or after December 2, 2003, meets the criteria of paragraphs (g)(3)(i)(A) and (B) or paragraph (g)(3)(i)(C) of this section or on or after October 7, 2001, meets the criteria of paragraph (g)(3)(i)(D) or (E) of this section:

(A) The family member's active duty sponsor has been assigned permanent duty as a recruiter; as an instructor at an educational institution, an administrator of a program, or to provide administrative services in support of a program of instruction for the Reserve Officers' Training Corps; as a full-time adviser to a unit of a reserve component; or any other permanent duty designated by the Director that the Director determines is more than 50 miles, or approximately one hour driving time, from the nearest military treatment facility that is adequate to provide care.

(B) The family members and active duty sponsor, pursuant to the assignment of duty described in paragraph (g)(3)(i)(A) of this section, reside at a location designated by the Director, that the Director determines is more than 50 miles, or approximately one hour driving time, from the nearest military medical treatment facility adequate to provide care.

(C) The family member, having resided together with the active duty sponsor while the sponsor served in an assignment described in paragraph (g)(3)(i)(A) of this section, continues to reside at the same location after the sponsor relocates without the family member pursuant to orders for a permanent change of duty station, and the orders do not authorize dependents to accompany the sponsor to the new duty station at the expense of the United States.

(D) For a 3 year period, the surviving spouse of a member who dies while on active duty for a period of more than 30 days whose death occurred on or after October 7, 2001.

(E) The surviving dependent child or unmarried person as defined in § 199.3(b)(2)(ii) or (iv), of a member who dies while on active duty for a period of more than 30 days whose death occurred on or after October 7, 2001, for three years from the date the active duty sponsor dies or until the surviving eligible dependent:

(*1*) Attains 21 years of age; or

(*2*) Attains 23 years of age or ceases to pursue a full-time course of study prior to attaining 23 years of age, if, at 21 years of age, the eligible surviving dependent is enrolled in a full-time course of study in a secondary school or in a full-time course of study in an institution of higher education approved by the Secretary of Defense and was, at the time of the sponsor's death, in fact dependent on the member for over one-half of such dependent's support.

(ii) A family member who is a dependent of a reserve component member is eligible for TRICARE Prime Remote for Active Duty Family Members if he or she is eligible for CHAMPUS and meets all of the following additional criteria:

(A) The reserve component member has been ordered to active duty for a period of more than 30 days.

(B) The family member resides with the member.

(C) The Director, determines the residence of the reserve component member is more than 50 miles, or approximately one hour driving time, from the nearest military medical treatment facility that is adequate to provide care.

(D) ''Resides with'' is defined as the TRICARE Prime Remote residence address at which the family resides with the activated reservist upon activation.

(4) *Enrollment.* TRICARE Prime Remote for Active Duty Family Members requires enrollment under procedures set forth in paragraph (o) of this section or as otherwise established by the Director.

(5) *Health care management requirements under TRICARE Prime Remote for Active Duty Family Members.* The additional health care management requirements applicable to Prime enrollees under paragraph (n) of this section are applicable under TRICARE Prime Remote for Active Duty Family Members unless the Director determines they are infeasible because of the particular remote location. Enrollees will be given notice of the applicable management requirements in their remote location.

(6) *Cost sharing.* Beneficiary cost sharing requirements under TRICARE Prime Remote for Active Duty Family Members are the same as those under TRICARE Prime under paragraph (m) of this section, except that the higher point-of-service option cost sharing and deductible shall not apply to routine primary health care services in cases in which, because of the remote location, the beneficiary is not assigned a primary care manager or the Director determines that care from a TRICARE network provider is not available within the

TRICARE access standards under paragraph (p)(5) of this section. The higher point-of-service option cost sharing and deductible shall apply to specialty health care services received by any TRICARE Prime Remote for Active Duty Family Members enrollee unless an appropriate referral/preauthorization is obtained as required by paragraph (n) of this section under TRICARE Prime. In the case of pharmacy services under § 199.21, where the Director determines that no TRICARE network retail pharmacy has been established within a reasonable distance of the residence of the TRICARE Prime Remote for Active Duty Family Members enrollee, cost sharing applicable to TRICARE network retail pharmacies will be applicable to all CHAMPUS eligible pharmacies in the remote area.

(h) *Resource sharing agreements.* Under the TRICARE program, any military medical treatment facility (MTF) commander may establish resource sharing agreements with the applicable managed care support contractor for the purpose of providing for the sharing of resources between the two parties. Internal resource sharing and external resource sharing agreements are authorized. The provisions of this paragraph (h) shall apply to resource sharing agreements under the TRICARE program.

(1) In connection with internal resource sharing agreements, beneficiary cost sharing requirements shall be the same as those applicable to health care services provided in facilities of the uniformed services.

(2) Under internal resource sharing agreements, the double coverage requirements of § 199.8 shall be replaced by the Third Party Collection procedures of 32 CFR part 220, to the extent permissible under such part. In such a case, payments made to a resource sharing agreement provider through the TRICARE managed care support contractor shall be deemed to be payments by the MTF concerned.

(3) Under internal or external resource sharing agreements, the commander of the MTF concerned may authorize the provision of services, pursuant to the agreement, to Medicare-eligible beneficiaries, if such services are not reimbursable by Medicare, and if the commander determines that this will promote the most cost-effective provision of services under the TRICARE program.

(4) Under external resource sharing agreements, there is no cost sharing applicable to services provided by military facility personnel. Cost sharing for non-MTF institutional and related ancillary charges shall be as applicable to services provided under TRICARE Prime or TRICARE Select, as appropriate.

(i) *General quality assurance, utilization review, and preauthorization requirements under the TRICARE program.* All quality assurance, utilization review, and preauthorization requirements for the basic CHAMPUS program, as set forth in this part (see especially applicable provisions in §§ 199.4 and 199.15), are applicable to Prime and Select except as provided in this chapter. Pursuant to an agreement between a military medical treatment facility and TRICARE managed care support contractor, quality assurance, utilization review, and preauthorization requirements and procedures applicable to health care services outside the military medical treatment facility may be made applicable, in whole or in part, to health care services inside the military medical treatment facility.

(j) *Pharmacy services.* Pharmacy services under Prime and Select are as provided in the Pharmacy Benefits Program (see § 199.21).

(k) *Design of cost sharing structures under TRICARE Prime and TRICARE Select*—(1) *In general.* The design of the cost sharing structures under TRICARE Prime and TRICARE Select includes several major factors: beneficiary category (*e.g.,* active duty family member category or retired category, and there are some special rules for survivors of active duty deceased sponsors and medically retired members and their dependents); date of initial military affiliation (*i.e.,* before or on or after January 1, 2018), category of health care service received, and network or non-network status of the provider.

(2) *Categories of health care services.* This paragraph (k)(2) describes the categories of health care services relevant to determining copayment amounts.

(i) Preventive care visits. These are outpatient visits and related services described in paragraph (f)(2) of this section. There are no cost sharing requirements for preventive care listed under §§ 199.4(e)(28)(i) through (iv) and 199.17(f)(2). Beneficiaries shall not be required to pay any portion of the cost of these preventive services even if the beneficiary has not satisfied any applicable deductible for that year.

(ii) Primary care outpatient visits. These are outpatient visits, not occurring in an ER or urgent care center, with the following provider specialties:

(A) General Practice.

(B) Family Practice.

(C) Internal Medicine.

(D) OB/GYN.

(E) Pediatrics.

(F) Physician's Assistant.

(G) Nurse Practitioner.

(H) Nurse Midwife.

(iii) Specialty care outpatient visits. This category applies to outpatient care provided by provider specialties other than those listed under primary care outpatient visits under paragraph (k)(2)(ii) of this section and not specifically included in one of the other categories of care (*e.g.,* emergency room visits etc.) under paragraph (k)(2) of this section. This category also includes partial hospitalization services, intensive outpatient treatment, and opioid treatment program services. The per visit fee shall be applied on a per day basis on days services are received, with the exception of opioid treatment program services reimbursed in accordance with § 199.14(a)(2)(ix)(A)(*3*)(*i*) which per visit fee will apply on a weekly basis.

(iv) Emergency room visits.

(v) Urgent care center visits.

(vi) Ambulance services. This is for ground ambulance services.

(vii) Ambulatory surgery. This is for facility-based outpatient ambulatory surgery services.

(viii) Inpatient hospital admissions.

(ix) Skilled nursing facility or rehabilitation facility admissions. This category includes a residential treatment center, or substance use disorder rehabilitation facility residential treatment program.

(x) Durable medical equipment, prosthetic devices, and other authorized supplies.

(xi) Outpatient prescription pharmaceuticals. These are addressed in § 199.21.

(3) *Beneficiary categories further subdivided.* For purposes of both TRICARE Prime and TRICARE Select, enrollment fees and cost sharing by beneficiary category (*e.g.,* active duty family member category or retired category) are further differentiated between two groups:

(i) Group A consists of Prime or Select enrollees whose sponsor originally enlisted or was appointed in a uniformed service before January 1, 2018.

(ii) Group B consists of Prime or Select enrollees whose sponsor originally enlisted or was appointed in a uniformed service on or after January 1, 2018.

(l) *Enrollment fees and cost sharing (including deductibles and catastrophic cap) amounts.* This paragraph (l) provides enrollment fees and cost sharing requirements applicable to TRICARE Prime and TRICARE Select enrollees.

(1) *Enrollment fee and cost sharing under TRICARE Prime.* (i) For Group A enrollees:

(A) There is no enrollment fee for the active duty family member category.

(B) The retired category enrollment fee in calendar year 2018 is equal to the Prime enrollment fee for fiscal year 2017, indexed to calendar year 2018 and thereafter in accordance with 10 U.S.C. 1097. The Assistant Secretary of Defense (Health Affairs) may exempt survivors of active duty deceased sponsors and medically retired Uniformed Services members and their dependents from future increases in enrollment fees. The Assistant Secretary of Defense (Health Affairs) may also waive the enrollment fee requirements for Medicare-eligible beneficiaries.

(C) The cost sharing amounts are established annually in connection with the open season enrollment period. An amount is established for each category of care identified in paragraph (k)(2) of this section, taking into account all applicable statutory provisions, including 10 U.S.C. chapter 55. The amount for each category of care may not exceed the amount for Group B as set forth in 10 U.S.C. 1075a.

(D) The catastrophic cap is $1,000 for active duty families and $3,000 for retired category families.

(ii) For Group B enrollees, the enrollment fee, catastrophic cap and cost sharing amounts are as set forth in 10 U.S.C. 1075a.

(iii) For both Group A and Group B, for health care services obtained by a Prime enrollee but not obtained in accordance with the rules and procedures of Prime (*e.g.* failure to obtain a primary care manager referral when such a referral is required or seeing a non-network provider when Prime rules require use of a network provider and one is available) will not be paid under Prime rules but may be covered by the point-of-service option. For services obtained under the point-of-service option, the deductible is $300 per person and $600 per family. The beneficiary cost share is 50 percent of the allowable charges for inpatient and outpatient care, after the deductible. Point-of-service charges do not count against the annual catastrophic cap.

(2) *Enrollment fee and cost sharing under TRICARE Select.* (i) For Group A enrollees:

(A) The enrollment fee in calendar years 2018 through 2020 is zero and the catastrophic cap is as provided in 10 U.S.C. 1079 or 1086. The enrollment fee and catastrophic cap in 2021 and thereafter for certain beneficiaries in the retired category is as provided in 10 U.S.C. 1075(e), except the enrollment fee and catastrophic cap adjustment shall not apply to survivors of active duty deceased sponsors and medically retired Uniformed Services members and their dependents.

(B) The cost sharing amounts for network care for Group A enrollees are calculated for each category of care described in paragraph (k)(2) of this section by taking into account all applicable statutory provisions, including 10 U.S.C. chapter 55, as if TRICARE Extra and Standard programs were still being implemented. When determined practicable, including efficiency and effectiveness in administration, the amounts established are converted to fixed dollar amounts for each category of care for which a fixed dollar amount is established by 10 U.S.C. 1075. When determined not to be practicable, as in the categories of care including ambulatory surgery, inpatient admissions, and inpatient skilled nursing/rehabilitation admissions, the calculated cost-sharing amounts are not converted to fixed dollar amounts. The fixed dollar amount for each category is set prospectively for each calendar year as the amount (rounded down to the nearest dollar amount) equal to 15% for enrollees in the active duty family beneficiary category or 20% for enrollees in the retired beneficiary category of the projected average allowable payment amount for each category of care during the year, as estimated by the Director. The projected average allowable payment amount for primary care (including urgent care) and specialty care outpatient appointments include payments for ancillary services (*e.g.,* laboratory and radiology services) that are provided in connection with the respective outpatient visit. As such, there is no separate cost sharing for these ancillary services.

(C) The cost share for care received from non-network providers is as provided in § 199.4.

(D) The annual deductible amount is as provided in 10 U.S.C. 1079 or 1086.

(ii) For Group B enrollees, the enrollment fee, annual deductible for services received while in an outpatient status, catastrophic cap and cost sharing amounts are as provided in 10 U.S.C. 1075 and as consistent with this section.

(3) *Special cost-sharing rules.* (A) There is no separate cost-sharing applicable to ancillary health care services obtained in conjunction with an outpatient primary or specialty care visit under TRICARE Prime or from network providers under TRICARE Select.

(B) Cost-sharing for maternity care services shall be determined in accordance with § 199.4(e)(16).

(4) *Special transition rule for the last quarter of calendar year 2017.* In order to transition enrollment fees, deductibles, and catastrophic caps from a fiscal year basis to a calendar year basis, the following special rules apply for the last quarter of calendar year 2017:

(A) A Prime enrollee's enrollment fee for the quarter is one-fourth of the enrollment fee for fiscal year 2017.

(B) The deductible amount and the catastrophic cap amount for fiscal year 2017 will be applicable to the 15-month period of October 1, 2016 through December 31, 2017.

(m) *Limit on out-of-pocket costs under TRICARE Prime and TRICARE Select.* For the purpose of this paragraph (m), out-of-pocket costs means all payments required of beneficiaries under paragraph (l) of this section, including enrollment fees, deductibles, and cost-sharing amounts, with the exception of point-of-service charges. In any case in which a family reaches their applicable catastrophic cap, all remaining payments that would have been required of the beneficiary under paragraph (l) of this section for authorized care, with the exception of applicable point-of-service charges pursuant to paragraph (l)(1)(iii) of this section, will be paid by the program for the remainder of that calendar year.

(n) *Additional health care management requirements under TRICARE Prime.* Prime has additional, special health care management requirements not applicable under TRICARE Select.

(1) *Primary care manager.* (i) All active duty members and Prime enrollees will be assigned a primary care manager pursuant to a system established by the Director, and consistent with the access standards in paragraph (p)(5)(i) of this section. The primary care manager may be an individual, physician, a group practice, a clinic, a treatment site, or other designation. The primary care manager may be part of the MTF or the Prime civilian provider network. The enrollee will be given the opportunity to register a preference for primary care manager from a list of choices provided by the Director. This preference will be entered on a TRICARE Prime enrollment form or similar document. Preference requests will be considered, but primary care manager assignments will be subject to availability under the MTF beneficiary category priority system under paragraph (d) of this section and subject to other operational requirements. (ii) Prime enrollees who are dependents of active duty members in pay grades E–1 through E–4 shall have priority over

other active duty dependents for enrollment with MTF PCMs, subject to MTF capacity.

(2) *Referral and preauthorization requirements.* (i) Under TRICARE Prime there are certain procedures for referral and preauthorization.

(A) For the purpose of this paragraph (n)(2), referral addresses the issue of who will provide authorized health care services. In many cases, Prime beneficiaries will be referred by a primary care manager to a medical department of an MTF if the type of care needed is available at the MTF. In such a case, failure to adhere to that referral will result in the care being subject to point-of-service charges. In other cases, a referral may be to the civilian provider network, and again, point-of-service charges would apply to a failure to follow the referral.

(B) In contrast to referral, preauthorization addresses the issue of whether particular services may be covered by TRICARE, including whether they appear necessary and appropriate in the context of the patient's diagnosis and circumstances. A major purpose of preauthorization is to prevent surprises about coverage determinations, which are sometimes dependent on particular details regarding the patient's condition and circumstances. While TRICARE Prime has referral requirements that do not exist for TRICARE Select, TRICARE Select has some preauthorization requirements that do not exist for TRICARE Prime.

(ii) Except as otherwise provided in this paragraph (n)(2), a beneficiary enrolled in TRICARE Prime is required to obtain a referral for care through a designated primary care manager (or other authorized care coordinator) prior to obtaining care under the TRICARE program.

(iii) There is no referral requirement under paragraph (n)(2)(i) of this section in the following circumstances:

(A) In emergencies;

(B) For urgent care services for a certain number of visits per year (zero to unlimited), with the number specified by the Director and notice provided in connection with the open season enrollment period preceding the plan year; and

(C) In any other special circumstances identified by the Director, generally with notice provided in connection with the open season enrollment period for the plan year.

(iv) A primary care manager who believes a referral to a specialty care provider is medically necessary and appropriate need not obtain pre-authorization from the managed care support contractor before referring a patient to a network specialty care provider. Such preauthorization is only required with respect to a primary care manager's referral for:

(A) Inpatient hospitalization;

(B) Inpatient care at a skilled nursing facility;

(C) Inpatient care at a rehabilitation facility; and

(D) Inpatient care at a residential treatment facility.

(v) The restrictions in paragraph (n)(2)(iv) of this section on preauthorization requirements do not apply to any preauthorization requirements that are generally applicable under TRICARE, independent of TRICARE Prime referrals, such as:

(A) Under the Pharmacy Benefits Program under 10 U.S.C. 1074g and § 199.21.

(B) For laboratory and other ancillary services.

(C) Durable medical equipment.

(vi) The cost-sharing requirement for a beneficiary enrolled in TRICARE Prime who does not obtain a referral for care when it is required, including care from a non-network provider, is as provided in paragraph (l)(1)(iv) of this section concerning point-of-service care.

(vii) In the case of care for which preauthorization is not required under paragraph (n)(2)(iv) of this section, the Director may authorize a managed care support contractor to offer a voluntary pre-authorization program to enable beneficiaries and providers to confirm covered benefit status and/or medical necessity or to understand the criteria that will be used by the managed care support contractor to adjudicate the claim associated with the proposed care. A network provider may not be required to use such a program with respect to a referral.

(3) *Restrictions on the use of providers.* The requirements of this paragraph (n)(3) shall be applicable to health care utilization under TRICARE Prime, except in cases of emergency care and under point-of-service option (see paragraph (n)(4) of this section).

(i) Prime enrollees must obtain all primary health care from the primary care manager or from another provider to which the enrollee is referred by the primary care manager or otherwise authorized.

(ii) For any necessary specialty care and non-emergent inpatient care, the primary care manager or other authorized individual will assist in making an appropriate referral.

(iii) Though referrals for specialty care are generally the responsibility of the primary care managers, subject to discretion exercised by the TRICARE Regional Directors, and established in regional policy or memoranda of understanding, specialist providers may be permitted to refer patients for additional specialty consultation appointment services within the TRICARE contractor's network without prior authorization by primary care managers.

(iv) The following procedures will apply to health care referrals under TRICARE Prime:

(A) The first priority for referral for specialty care or inpatient care will be to the local MTF (or to any other MTF in which catchment area the enrollee resides).

(B) If the local MTF(s) are unavailable for the services needed, but there is another MTF at which the needed services can be provided, the enrollee may be required to obtain the services at that MTF. However, this requirement will only apply to the extent that the enrollee was informed at the time of (or prior to) enrollment that mandatory referrals might be made to the MTF involved for the service involved.

(C) If the needed services are available within civilian preferred provider network serving the area, the enrollee may be required to obtain the services from a provider within the network. Subject to availability, the enrollee will have the freedom to choose a provider from among those in the network.

(D) If the needed services are not available within the civilian preferred provider network serving the area, the enrollee may be required to obtain the services from a designated civilian provider outside the area. However, this requirement will only apply to the extent that the enrollee was informed at the time of (or prior to) enrollment that mandatory referrals might be made to the provider involved for the service involved (with the provider and service either identified specifically or in connection with some appropriate classification).

(E) In cases in which the needed health care services cannot be provided pursuant to the procedures identified in paragraphs (n)(3)(iv)(A) through (D) of this section, the enrollee will receive authorization to obtain services from a TRICARE-authorized civilian provider(s) of the enrollee's choice not affiliated with the civilian preferred provider network.

(iv) When Prime is operating in non-catchment areas, the requirements in paragraphs (n)(3)(iv)(B) through (E) of this section shall apply.

(4) *Point-of-service option.* TRICARE Prime enrollees retain the freedom to obtain services from civilian providers

on a point-of service basis. Any health care services obtained by a Prime enrollee, but not obtained in accordance with the rules and procedures of Prime, will be covered by the point-of-service option. In such cases, all requirements applicable to health benefits under § 199.4 shall apply, except that there shall be higher deductible and cost sharing requirements (as set forth in paragraph (l)(1)(iii)) of this section). However, Prime rules may cover such services if the enrollee did not know and could not reasonably have been expected to know that the services were not obtained in accordance with the utilization management rules and procedures of Prime.

(5) *Prime travel benefit.* In accordance with guidelines issues by the Assistant Secretary of Defense (Health Affairs), certain travel expenses may be reimbursed when a TRICARE Prime enrollee is referred by the primary care manager for medically necessary specialty care more than 100 miles away from the primary care manager's office. Such guidelines shall be consistent with appropriate provisions of generally applicable Department of Defense rules and procedures governing travel expenses.

(o) *TRICARE program enrollment procedures.* There are certain requirements pertaining to procedures for enrollment in TRICARE Prime, TRICARE Select, and TRICARE Prime Remote for Active Duty Family Members. (These procedures do not apply to active duty members, whose enrollment is mandatory and automatic.)

(1) *Annual open season enrollment.* (i) As a general rule, enrollment (or a modification to a previous enrollment) must occur during the open season period prior to the plan year, which is on a calendar year basis. The open season enrollment period will be of at least 30 calendar days duration. An enrollment choice will be applicable for the plan year.

(ii) Open season enrollment procedures may include automatic re-enrollment in the same plan for the next plan year for enrollees or sponsors that will occur in the event the enrollee does not take other action during the open season period.

(2) *Exceptions to the calendar year enrollment process.* The Director will identify certain qualifying events that may be the basis for a change in enrollment status during a plan year, such as a change in eligibility status, marriage, divorce, birth of a new family member, relocation, loss of other health insurance, or other events. In the case of such an event, a beneficiary eligible to enroll in a plan may newly enroll, dis-enroll, or modify a previous enrollment during the plan year. Initial payment of the applicable enrollment fee shall be collected for new enrollments in accordance with established procedures. Any applicable enrollment fee will be pro-rated. A beneficiary who dis-enrolls without enrolling at the same time in another plan is not eligible to enroll in a plan later in the same plan year unless there is another qualifying event. A beneficiary who is dis-enrolled for failure to pay a required enrollment fee installment is not eligible to re-enroll in a plan later in the same plan year unless there is another qualifying event. Generally, the effective date of coverage will coincide with the date of the qualifying event.

(3) *Installment payments of enrollment fee.* The Director will establish procedures for installment payments of enrollment fees. (4) *Effect of failure to enroll.* Beneficiaries eligible to enroll in Prime or Select and who do not enroll will no longer have coverage under the TRICARE program until the next annual open season enrollment or they have a qualifying event, except that they do not lose any statutory eligibility for space-available care in military medical treatment facilities. There is a limited grace period exception to this enrollment requirement for calendar year 2018, as provided in section 701(d)(3) of the National Defense Authorization Act for Fiscal Year 2017.

(5) *Automatic enrollment for certain dependents.* Under 10 U.S.C. 1097a, in the case of dependents of active duty members in the grade of E–1 to E–4, such dependents who reside in a catchment area of a military treatment facility shall be enrolled in TRICARE Prime. The Director may provide for the automatic enrollment in TRICARE Prime for such dependents of active duty members in the grade of E–5 and higher. In any case of automatic enrollment under this paragraph (o)(5), the member will be provided written notice and the automatic enrollment may be cancelled at the election of the member.

(6) *Grace periods.* The Director may make provisions for grace periods for enrollment-related actions to facilitate effective operation of the enrollment program.

(p) *Civilian preferred provider networks.* A major feature of the TRICARE program is the civilian preferred provider network.

(1) *Status of network providers.* Providers in the preferred provider network are not employees or agents of the Department of Defense or the United States Government. Although network providers must follow numerous rules and procedures of the TRICARE program, on matters of professional judgment and professional practice, the network provider is independent and not operating under the direction and control of the Department of Defense.

(2) *Utilization management policies.* Preferred providers are required to follow the utilization management policies and procedures of the TRICARE program. These policies and procedures are part of discretionary judgments by the Department of Defense regarding the methods of delivering and financing health care services that will best achieve health and economic policy objectives.

(3) *Quality assurance requirements.* A number of quality assurance requirements and procedures are applicable to preferred network providers. These are for the purpose of assuring that the health care services paid for with government funds meet the standards called for in the contract and provider agreement.

(4) *Provider qualifications.* All preferred providers must meet the following qualifications:

(i) They must be TRICARE-authorized providers and TRICARE- participating providers. In addition, a network provider may not require payment from the beneficiary for any excluded or excludable services that the beneficiary received from the network provider (*i.e.,* the beneficiary will be held harmless) except as follows:

(A) If the beneficiary did not inform the provider that he or she was a TRICARE beneficiary, the provider may bill the beneficiary for services provided.

(B) If the beneficiary was informed in writing that the specific services were excluded or excludable from TRICARE coverage and the beneficiary agreed in writing, in advance of the services being provided, to pay for the services, the provider may bill the beneficiary.

(ii) All physicians in the preferred provider network must have staff privileges in a hospital accredited by The Joint Commission (TJC) or other accrediting body determined by the Director. This requirement may be waived in any case in which a physician's practice does not include the need for admitting privileges in such a hospital, or in locations where no accredited facility exists. However, in any case in which the requirement is waived, the physician must comply with alternative qualification standards as are established by the Director.

(iii) All preferred providers must agree to follow all quality assurance, utilization management, and patient

referral procedures established pursuant to this section, to make available to designated DoD utilization management or quality monitoring contractors medical records and other pertinent records, and to authorize the release of information to MTF Commanders regarding such quality assurance and utilization management activities.

(iv) All preferred network providers must be Medicare participating providers, unless this requirement is waived based on extraordinary circumstances. This requirement that a provider be a Medicare participating provider does not apply to providers who not eligible to be participating providers under Medicare.

(v) The network provider must be available to all TRICARE beneficiaries.

(vi) The provider must agree to accept the same payment rates negotiated for Prime enrollees for any person whose care is reimbursable by the Department of Defense, including, for example, Select participants, supplemental care cases, and beneficiaries from outside the area.

(vii) All preferred providers must meet all other qualification requirements, and agree to comply with all other rules and procedures established for the preferred provider network.

(viii) In locations where TRICARE Prime is not available, a TRICARE provider network will, to the extent practicable, be available for TRICARE Select enrollees. In these locations, the minimal requirements for network participation are those set forth in paragraph (p)(4)(i) of this section. Other requirements of this paragraph (p) will apply unless waived by the Director.

(5) *Access standards.* Preferred provider networks will have attributes of size, composition, mix of providers and geographical distribution so that the networks, coupled with the MTF capabilities (when applicable), can adequately address the health care needs of the enrollees. In the event that a Prime enrollee seeks to obtain from the managed care support contractor an appointment for care but is not offered an appointment within the access time standards from a network provider, the enrollee will be authorized to receive care from a non-network provider without incurring the additional fees associated with point-of-service care. The following are the access standards:

(i) Under normal circumstances, enrollee travel time may not exceed 30 minutes from home to primary care delivery site unless a longer time is necessary because of the absence of providers (including providers not part of the network) in the area.

(ii) The wait time for an appointment for a well-patient visit or a specialty care referral shall not exceed four weeks; for a routine visit, the wait time for an appointment shall not exceed one week; and for an urgent care visit the wait time for an appointment shall generally not exceed 24 hours.

(iii) Emergency services shall be available and accessible to handle emergencies (and urgent care visits if not available from other primary care providers pursuant to paragraph (p)(5)(ii) of this section), within the service area 24 hours a day, seven days a week.

(iv) The network shall include a sufficient number and mix of board certified specialists to meet reasonably the anticipated needs of enrollees. Travel time for specialty care shall not exceed one hour under normal circumstances, unless a longer time is necessary because of the absence of providers (including providers not part of the network) in the area. This requirement does not apply under the Specialized Treatment Services Program.

(v) Office waiting times in nonemergency circumstances shall not exceed 30 minutes, except when emergency care is being provided to patients, and the normal schedule is disrupted.

(6) *Special reimbursement methods for network providers.* The Director, may establish, for preferred provider networks, reimbursement rates and methods different from those established pursuant to § 199.14. Such provisions may be expressed in terms of percentage discounts off CHAMPUS allowable amounts, or in other terms. In circumstances in which payments are based on hospital-specific rates (or other rates specific to particular institutional providers), special reimbursement methods may permit payments based on discounts off national or regional prevailing payment levels, even if higher than particular institution-specific payment rates.

(q) *Preferred provider network establishment.* (1) The any qualified provider method may be used to establish a civilian preferred provider network. Under this method, any TRICARE-authorized provider that meets the qualification standards established by the Director, or designee, may become a part of the preferred provider network. Such standards must be publicly announced and uniformly applied. Also under this method, any provider who meets all applicable qualification standards may not be excluded from the preferred provider network. Qualifications include:

(i) The provider must meet all applicable requirements in paragraph (p)(4) of this section.

(ii) The provider must agree to follow all quality assurance and utilization management procedures established pursuant to this section.

(iii) The provider must be a participating provider under TRICARE for all claims.

(iv) The provider must meet all other qualification requirements, and agree to all other rules and procedures, that are established, publicly announced, and uniformly applies by the Director (or other authorized official).

(v) The provider must sign a preferred provider network agreement covering all applicable requirements. Such agreements will be for a duration of one year, are renewable, and may be canceled by the provider or the Director (or other authorized official) upon appropriate notice to the other party. The Director shall establish an agreement model or other guidelines to promote uniformity in the agreements.

(2) In addition to the above requirements, the Director, or designee, may establish additional categories of preferred providers of high quality/high value that require additional qualifications.

(r) *General fraud, abuse, and conflict of interest requirements under TRICARE program.* All fraud, abuse, and conflict of interest requirements for the basic CHAMPUS program, as set forth in this part (see especially applicable provisions of § 199.9) are applicable to the TRICARE program.

(s) [Reserved]

(t) *Inclusion of Department of Veterans Affairs Medical Centers in TRICARE networks.* TRICARE preferred provider networks may include Department of Veterans Affairs health facilities pursuant to arrangements, made with the approval of the Assistant Secretary of Defense (Health Affairs), between those centers and the Director, or designated TRICARE contractor.

(u) *Care provided outside the United States.* The TRICARE program is not automatically implemented in all respects outside the United States. This paragraph (u) sets forth the provisions of this section applicable to care received outside the United States under the following TRICARE health plans.

(1) *TRICARE Prime.* The Director may, in conjunction with implementation of the TRICARE program, authorize a special Prime program for command sponsored dependents of active duty members who accompany the members in their assignments in foreign countries. Under this special program, a preferred provider network may be

established through contracts or agreements with selected health care providers. Under the network, Prime covered services will be provided to the enrolled covered dependents subject to applicable Prime deductibles, copayments, and point-of-service charges. To the extent practicable, rules and procedures applicable to TRICARE Prime under this section shall apply unless specific exemptions are granted in writing by the Director. The use of this authority by the Director for any particular geographical area will be published on the primary publicly available Internet Web site of the Department and on the publicly available Internet Web site of the managed care support contractor that has established the provider network under the TRICARE program. Published information will include a description of the preferred provider network program and other pertinent information. The Director shall also issue policies, instructions, and guidelines necessary to implement this special program.

(2) *TRICARE Select.* The TRICARE Select option shall be available outside the United States except that a preferred provider network of providers shall only be established in areas where the Director determines that it is economically in the best interest of the Department of Defense. In such a case, the Director shall establish a preferred provider network through contracts or agreements with selected health care providers for eligible beneficiaries to receive covered benefits subject to the enrollment and cost-sharing amounts applicable to the specific category of beneficiary. When an eligible beneficiary, other than a TRICARE for Life beneficiary, receives covered services from an authorized TRICARE non-network provider, including in areas where a preferred provider network has not been established by the Director, the beneficiary shall be subject to cost-sharing amounts applicable to out-of-network care. To the extent practicable, rules and procedures applicable to TRICARE Select under this section shall apply unless specific exemptions are granted in writing by the Director. The use of this authority by the Director to establish a TRICARE preferred provider network for any particular geographical area will be published on the primary publicly available Internet Web site of the Department and on the publicly available Internet Web site of the managed care support contractor that has established the provider network under the TRICARE program. Published information will include a description of the preferred provider network program and other pertinent information. The Director shall also issue policies, instructions, and guidelines necessary to implement this special program.

(3) *TRICARE for Life.* The TRICARE for Life (TFL) option shall be available outside the United States. Eligible TFL beneficiaries may receive covered services and supplies authorized under § 199.4, subject to the applicable catastrophic cap, deductibles and cost-shares under § 199.4, whether received from a network provider or any authorized TRICARE provider not in a preferred provider network. However, if a TFL beneficiary receives covered services from a PPN provider, the beneficiary's out-of-pocket costs will generally be lower.

(v) *Administration of the TRICARE program in the state of Alaska.* In view of the unique geographical and environmental characteristics impacting the delivery of health care in the state of Alaska, administration of the TRICARE program in the state of Alaska will not include financial underwriting of the delivery of health care by a TRICARE contractor. All other provisions of this section shall apply to administration of the TRICARE program in the state of Alaska as they apply to the other 49 states and the District of Columbia.

(w) *Administrative procedures.* The Assistant Secretary of Defense (Health Affairs), the Director, and MTF Commanders (or other authorized officials) are authorized to establish administrative requirements and procedures, consistent with this section, this part, and other applicable DoD Directives or Instructions, for the implementation and operation of the TRICARE program.

§ 199.18 [Removed and Reserved]

■ 10. Section 199.18 is removed and reserved.

■ 11. Section 199.20 is amended by:
■ a. Revising paragraph (a);
■ b. Removing the words ''TRICARE Standard program'' and adding in their place the words ''TRICARE Select program'' in paragraph (c);
■ c. Revising paragraphs (d)(7)(i)(D) introductory text, (d)(7)(i)(D)(*1*) and (*2*), and (e)(1) and (3);
■ d. Removing the words ''TRICARE Standard'' and adding in their place the words ''TRICARE Select program'' in paragraphs (f) through (n);
■ e. Removing and reserving paragraph (o);
■ f. Revising paragraph (p)(1);
■ g. Removing the semicolon at the end of paragraph (p)(2)(iii) and adding ''; and'' in its place;
■ h. Revising paragraph (p)(2)(iv); and
■ i. Removing paragraph (p)(2)(v).

The revisions and additions read as follows:

§ 199.20 Continued Health Care Benefit Program (CHCBP).

(a) *Purpose.* The CHCBP is a premium-based temporary health care coverage program, authorized by 10 U.S.C. 1078a, and available to individuals who meet the eligibility and enrollment criteria as set forth in paragraph (d)(1) of this section. The CHCBP is not part of the TRICARE program. However, as set forth in this section, it functions under similar rules and procedures to the TRICARE Select program. Because the purpose of the CHCBP is to provide a continuation health care benefit for Department of Defense and the other uniformed services beneficiaries losing eligibility, it will be administered so that it appears, to the maximum extent practicable, to be part of the TRICARE Select program. Medical coverage under this program will be the same as the benefits payable under the TRICARE Select program. There is a cost for enrollment to the CHCBP and these premium costs must be paid by CHCBP enrollees before any care may be cost shared.

* * * * *

(d) * * *

(7) * * *

(i) * * *

(D) In the case of a former spouse of a member or former member (other than the former spouse whose marriage was dissolved after the separation of the member from the service unless such separation was by retirement), the period of coverage under the CHCBP is unlimited, if former spouse:

(*1*) Has not remarried before age of 55 after the marriage to the member or former member was dissolved; and

(*2*) Was eligible for TRICARE as a dependent or enrolled in CHCBP at any time during the 18 month period before the date of the divorce, dissolution, or annulment; and

* * * * *

(e) * * *

(1) *In general.* Except as provided in paragraph (e)(2) of this section, the provisions of § 199.4 shall apply to the CHCBP as they do to TRICARE Select under § 199.17.

* * * * *

(3) *Beneficiary liability.* For purposes of CHCBP coverage, the beneficiary deductible, catastrophic cap and cost

share provisions of the TRICARE Select plan applicable to Group B beneficiaries under § 199.17(l)(2)(ii) shall apply based on the category of beneficiary (*e.g.,* Active Duty Family Member or Retiree Family) to which the CHCBP enrollee last belonged, except that for separating active duty members, amounts applicable to TRICARE Select Active Duty Family Members shall apply. The premium under paragraph (q) of this section applies instead of any TRICARE Select plan enrollment fee under § 199.17.

* * * * *

(p) * * *

(1) *In general.* Special programs established under this part that are not part of the TRICARE Select program are not, unless specifically provided in this section, available to participants in the CHCBP.

(2) * * *

(iv) The TRICARE Prime Program under § 199.17.

* * * * *

■ 12. Section 199.21 is amended by:

■ a. Revising paragraphs (i)(2) introductory text and (i)(2)(i) through (iv);

■ b. Removing and reserving paragraph (i)(2)(v); and

■ c. Revising paragraphs (i)(2)(vi) through (viii) and (i)(2)(x)(A).

The revisions read as follows:

§ 199.21 TRICARE Pharmacy Benefits Program.

* * * * *

(i) * * *

(2) *Cost-sharing amounts.* Active duty members of the uniformed services do not pay cost-shares or annual deductibles. For other categories of beneficiaries, after applicable annual deductibles are met, cost-sharing amounts prior to October 1, 2016, are set forth in this paragraph (i)(2).

(i) For pharmaceutical agents obtained from a military treatment facility, there is no cost-sharing or annual deductible.

(ii) For pharmaceutical agents obtained from a retail network pharmacy there is a:

(A) $24.00 cost-share per prescription required for up to a 30-day supply of a formulary pharmaceutical agent.

(B) $10.00 cost-share per prescription for up to a 30-day supply of a generic pharmaceutical agent.

(C) $0.00 cost-share for vaccines/immunizations authorized as preventive care for eligible beneficiaries.

(iii) For formulary and generic pharmaceutical agents obtained from a retail non-network pharmacy, except as provided in paragraph (i)(2)(vi) of this section, there is a 20 percent or $20.00 cost-share (whichever is greater) per prescription for up to a 30-day supply of the pharmaceutical agent.

(iv) For pharmaceutical agents obtained under the TRICARE mail-order program there is a:

(A) $20 cost-share per prescription for up to a 90-day supply of a formulary pharmaceutical agent.

(B) $0.00 cost-share for up to a 90-day supply of a generic pharmaceutical agent.

(C) $49.00 cost-share for up to a 90-day supply of a non-formulary pharmaceutical agent.

(D) $0.00 cost-share for smoking cessation pharmaceutical agents covered under the smoking cessation program.

* * * * *

(vi) For TRICARE Prime beneficiaries there is no annual deductible applicable for pharmaceutical agents obtained from retail network pharmacies or the TRICARE mail-order program. However, for TRICARE Prime beneficiaries who obtain formulary or generic pharmaceutical agents from retail non-network pharmacies, an enrollment year deductible of $300 per person and $600 per family must be met after which there is a beneficiary cost-share of 50 percent per prescription for up to a 30-day supply of the pharmaceutical agent.

(vii) For TRICARE Select beneficiaries the annual deductible which must be met before the cost-sharing amounts for pharmaceutical agents in paragraph (i)(2) of this section are applicable is as provided for each category of TRICARE Select enrollee in § 199.17(l)(2).

(viii) For TRICARE beneficiaries not otherwise qualified to enroll in TRICARE Prime or Select, the annual deductible which must be met before the cost-sharing amounts for pharmaceutical agents in paragraph (i)(2) of this section are applicable is as provided in § 199.4(f).

* * * * *

(x) * * *

(A) Beginning October 1, 2016, the amounts specified in this paragraph (i)(2) shall be increased annually by the percentage increase in the cost-of-living adjustment by which retired pay is increased under 10 U.S.C. 1401a for the year. If the amount of the increase is equal to or greater than 50 cents, the amount of the increase shall be rounded to the nearest multiple of $1. If the amount of the increase is less than 50 cents, the increase shall not be made for that year, but shall be carried over to, and accumulated with, the amount of the increase for the subsequent year or years and made when the aggregate amount of increases for a year is equal to or greater than 50 cents.

* * * * *

■ 13. In § 199.22, paragraph (a) is revised to read as follows:

§ 199.22 TRICARE Retiree Dental Program (TRDP).

(a) *Establishment.* The TRDP is a premium based indemnity dental insurance coverage program that will be available to certain retirees and their surviving spouses, their dependents, and certain other beneficiaries, as specified in paragraph (d) of this section. The TRDP is authorized by 10 U.S.C. 1076c.

(1) The Director will, except as authorized in paragraph (a)(2) of this section, make available a premium based indemnity dental insurance plan for eligible TRDP beneficiaries specified in paragraph (d) of this section consistent with the provisions of this section.

(2) The TRDP premium based indemnity dental insurance program under paragraph (a) of this section may be provided by allowing eligible beneficiaries specified in paragraph (d) of this section to enroll in an insurance plan under chapter 89A of title 5, United States Code that provides benefits similar to those benefits provided under paragraph (f) of this section. Such enrollment shall be authorized pursuant to an agreement entered into between the Department of Defense and the Office of Personnel Management which agreement, in the event of any inconsistency, shall take precedence over provisions in this section.

* * * * *

■ 14. Section 199.24 is amended by revising paragraphs (a) introductory text, (a)(4)(i) heading, (a)(4)(i)(A), (a)(4)(iv), (c) introductory text, (d) introductory text, (d)(1)(ii) and (iii), (d)(2) and (3), (f), and (g)(1) to read as follows:

§ 199.24 TRICARE Reserve Select.

(a) *Establishment.* TRICARE Reserve Select offers the TRICARE Select self-managed, preferred-provider network option under § 199.17 to qualified members of the Selected Reserve, their immediate family members, and qualified survivors under this section.

* * * * *

(4) * * *

(i) *TRICARE Select rules applicable.* (A) Unless specified in this section or otherwise prescribed by the Director, provisions of TRICARE Select under § 199.17 apply to TRICARE Reserve Select.

* * * * *

(iv) *Benefits.* When their coverage becomes effective, TRICARE Reserve

Select beneficiaries receive the TRICARE Select benefit including access to military treatment facility services and pharmacies, as described in §§ 199.17 and 199.21. TRICARE Reserve Select coverage features the deductible, catastrophic cap and cost share provisions of the TRICARE Select plan applicable to Group B active duty family members under § 199.17(l)(2)(ii) for both the member and the member's covered family members; however, the TRICARE Reserve Select premium under paragraph (c) of this section applies instead of any TRICARE Select plan enrollment fee under § 199.17. Both the member and the member's covered family members are provided access priority for care in military treatment facilities on the same basis as active duty service members' dependents who are not enrolled in TRICARE Prime as described in § 199.17(d)(1)(i)(D).

* * * * *

(c) *TRICARE Reserve Select premiums.* Members are charge premiums for coverage under TRICARE Reserve Select that represent 28 percent of the total annual premium amount that the Director determines on an appropriate actuarial basis as being appropriate for coverage under the TRICARE Select benefit for the TRICARE Reserve Select eligible population. Premiums are to be paid monthly, except as otherwise provided through administrative implementation, pursuant to procedures established by the Director. The monthly rate for each month of a calendar year is one-twelfth of the annual rate for that calendar year.

* * * * *

(d) *Procedures.* The Director may establish procedures for the following.

(1) * * *

(ii) *Qualifying event.* Procedures for qualifying events in TRICARE Select plans under § 199.17(o) shall apply to TRICARE Reserve Select coverage. Additionally, the Director may identify other events unique to needs of the Reserve Components as qualifying events.

(iii) *Enrollment.* Procedures for enrollment in TRICARE Select plans under § 199.17(o) shall apply to TRICARE Reserve Select enrollment. Generally, the effective date of coverage will coincide with the first day of a month unless enrollment is due to a qualifying event and a different date on or after the qualifying event is required to prevent a lapse in health care coverage.

* * * * *

(2) *Termination.* Termination of coverage for the TRS member/survivor will result in termination of coverage for the member's/survivor's family members in TRICARE Reserve Select. Procedures may be established for coverage to be terminated as follows.

(i) Coverage shall terminate when members or survivors no longer qualify for TRICARE Reserve Select as specified in paragraph (b) of this section, with one exception. If a member is involuntarily separated from the Selected Reserve under other than adverse conditions, as characterized by the Secretary concerned, and is covered by TRICARE Reserve Select on the last day of his or her membership in the Selected Reserve, then TRICARE Reserve Select coverage may terminate up to 180 days after the date on which the member was separated from the Selected Reserve. This applies regardless of type of coverage. This exception expires December 31, 2018.

(ii) Coverage may terminate for members, former members, and survivors who gain coverage under another TRICARE program.

(iii) In accordance with the provisions of § 199.17(o)(2) coverage terminates for members/survivors who fail to make premium payments in accordance with established procedures.

(iv) Coverage may be terminated for members/survivors upon request at any time by submitting a completed request in the appropriate format in accordance with established procedures.

(3) *Re-enrollment following termination.* Absent a new qualifying event, members/survivors (subject to paragraph (d)(1)(iv) of this section) are not eligible to re-enroll in TRICARE Reserve Select until the next annual open season.

* * * * *

(f) *Administration.* The Director may establish other rules and procedures for the effective administration of TRICARE Reserve Select, and may authorize exceptions to requirements of this section, if permitted by law.

(g) * * *

(1) *Coverage.* This term means the medical benefits covered under the TRICARE Select program as further outlined in § 199.17 whether delivered in military treatment facilities or purchased from civilian sources.

* * * * *

■ 15. Section 199.25 is amended by revising paragraphs (a) introductory text, (a)(4)(i) heading, (a)(4)(i)(A), (a)(4)(iv), (c) introductory text, (d) introductory text, (d)(1)(ii) and (iii), (d)(2) and (3), (f), and (g)(1) to read as follows:

§ 199.25 TRICARE Retired Reserve.

(a) *Establishment.* TRICARE Retired Reserve offers the TRICARE Select self-managed, preferred-provider network option under § 199.17 to qualified members of the Retired Reserve, their immediate family members, and qualified survivors under this section.

* * * * *

(4) * * *

(i) *TRICARE Select rules applicable.* (A) Unless specified in this section or otherwise prescribed by the ASD (HA), provisions of TRICARE Select under § 199.17 apply to TRICARE Retired Reserve.

* * * * *

(iv) *Benefits.* When their coverage becomes effective, TRICARE Retired Reserve beneficiaries receive the TRICARE Select benefit including access to military treatment facilities on a space available basis and pharmacies, as described in § 199.17. TRICARE Retired Reserve coverage features the deductible, cost sharing, and catastrophic cap provisions of the TRICARE Select plan applicable to Group B retired members and dependents of retired members under § 199.17(l)(2)(ii); however, the TRICARE Reserve Select premium under paragraph (c) of this section applies instead of any TRICARE Select plan enrollment fee under § 199.17. Both the member and the member's covered family members are provided access priority for care in military treatment facilities on the same basis as retired members and their dependents who are not enrolled in TRICARE Prime as described in § 199.17(d)(1)(i)(E).

* * * * *

(c) *TRICARE Retired Reserve premiums.* Members are charged for coverage under TRICARE Retired Reserve that represent the full cost of the program as determined by the Director utilizing an appropriate actuarial basis for the provision of the benefits provided under the TRICARE Select program for the TRICARE Retired Reserve eligible beneficiary population. Premiums are to be paid monthly, except as otherwise provided through administrative implementation, pursuant to procedures established by the Director. The monthly rate for each month of a calendar year is one-twelfth of the annual rate for that calendar year.

* * * * *

(d) *Procedures.* The Director may establish procedures for the following.

(1) * * *

(ii) *Qualifying event.* Procedures for qualifying events in TRICARE Select plans under § 199.17(o) shall apply to TRICARE Retired Reserve coverage.

(iii) *Enrollment.* Procedures for enrollment in TRICARE Select plans under § 199.17(o) shall apply to

TRICARE Retired Reserve enrollment. Generally, the effective date of coverage will coincide with the first day of a month unless enrollment is due to a qualifying event and a different date on or after the qualifying event is required to prevent a lapse in health care coverage.

* * * * *

(2) *Termination.* Termination of coverage for the TRR member/survivor will result in termination of coverage for the member's/survivor's family members in TRICARE Retired Reserve. Procedures may be established for coverage to be terminated as follows.

(i) Coverage shall terminate when members or survivors no longer qualify for TRICARE Retired Reserve as specified in paragraph (c) of this section. For purposes of this section, the member or their survivor no longer qualifies for TRICARE Retired Reserve when the member has been eligible for coverage in a health benefits plan under Chapter 89 of Title 5, U.S.C. for more than 60 days. Further, coverage shall terminate when the Retired Reserve member attains the age of 60 or, if survivor coverage is in effect, when the deceased Retired Reserve member would have attained the age of 60.

(ii) Coverage may terminate for members, former members, and survivors who gain coverage under another TRICARE program.

(iii) In accordance with the provisions of § 199.17(o)(2) coverage terminates for members/survivors who fail to make premium payments in accordance with established procedures.

(iv) Coverage may be terminated for members/survivors upon request at any time by submitting a completed request in the appropriate format in accordance with established procedures.

(3) *Re-enrollment following termination.* Absent a new qualifying event, members/survivors are not eligible to re-enroll in TRICARE Retired Reserve until the next annual open season.

* * * * *

(f) *Administration.* The Director may establish other rules and procedures for the effective administration of TRICARE Retired Reserve, and may authorize exceptions to requirements of this section, if permitted by law.

(g) * * *

(1) *Coverage.* This term means the medical benefits covered under the TRICARE Select program as further outlined in § 199.17 whether delivered in military treatment facilities or purchased from civilian sources.

* * * * *

■ 16. Section 199.26 is amended by:

■ a. Revising paragraphs (a) introductory text, (a)(4)(i)(C), (a)(4)(i)(D) introductory text, and (a)(4)(ii) and (iv);

■ b. Removing paragraph (a)(4)(v);

■ c. Revising paragraphs (c) introductory text, (d) introductory text, and (d)(1)(ii);

■ d. Removing paragraph (d)(1)(iii);

■ e. Revising paragraphs (d)(2) introductory text, (d)(2)(v), (vi), and (vii), and (f); and

■ f. Removing paragraph (g).

The revisions read as follows:

§ 199.26 TRICARE Young Adult.

(a) *Establishment.* The TRICARE Young Adult (TYA) program offers options of medical benefits provided under the TRICARE program to qualified unmarried adult children of TRICARE-eligible uniformed service sponsors who do not otherwise have eligibility for medical coverage under a TRICARE program at age 21 (23 if enrolled in a full-time course of study at an approved institution of higher learning, and the sponsor provides over 50 percent of the student's financial support), and are under age 26.

* * * * *

(4) * * *

(i) * * *

(C) TRICARE Select is available to all TYA-eligible young adult dependents.

(D) TRICARE Prime is available to TYA-eligible young adult dependents, provided that TRICARE Prime (including the Uniformed Services Family Health Plan) is available in the geographic location where the TYA enrollee resides. TYA-eligible young adults are:

* * * * *

(ii) *Premiums.* TYA coverage is a premium based program that an eligible young adult dependent may purchase. There is only individual coverage, and a premium shall be charged for each dependent even if there is more than one qualified dependent in the uniformed service sponsor's family that qualifies for TYA coverage. Dependents qualifying for TYA status can purchase individual TRICARE Select or TRICARE Prime coverage (as applicable) according to the rules governing the TRICARE option for which they are qualified on the basis of their uniformed service sponsor's TRICARE-eligible status (active duty, retired, Selected Reserve, or Retired Reserve) and the availability of a desired option in their geographic location. Premiums shall be determined in accordance with paragraph (c) of this section.

* * * * *

(iv) *Benefits.* When their TYA coverage becomes effective, qualified beneficiaries receive the benefit of the TRICARE option that they selected, including, if applicable, access to military treatment facilities and pharmacies. TYA coverage features the cost share, deductible and catastrophic cap provisions applicable to Group B beneficiaries based on the program selected, *i.e.,* the TRICARE Select program under § 199.17(l)(2)(ii) or the TRICARE Prime program under § 199.17(l)(ii), as well as the status of their military sponsor. Access to military treatment facilities under the system of access priorities in § 199.17(d)(1) is also based on the program selected as well as the status of the military sponsor. Premiums are not credited to deductibles or catastrophic caps; however, TYA premiums shall apply instead of any applicable TRICARE Prime or Select enrollment fee.

* * * * *

(c) *TRICARE Young Adult premiums.* Qualified young adult dependents are charged premiums for coverage under TYA that represent the full cost of the program, including reasonable administrative costs, as determined by the Director utilizing an appropriate actuarial basis for the provision of TRICARE benefits for the TYA-eligible beneficiary population. Separate premiums shall be established for TRICARE Select and Prime plans. There may also be separate premiums based on the uniformed services sponsor's status. Premiums are to be paid monthly, except as otherwise provided through administrative implementation, pursuant to procedures established by the Director. The monthly rate for each month of a calendar year is one-twelfth of the annual rate for that calendar year.

* * * * *

(d) *Procedures.* The Director may establish procedures for the following.

(1) * * *

(ii) *Enrollment.* Procedures for enrollment in TRICARE plans under § 199.17(o) shall apply to a qualified dependent purchasing TYA coverage. Generally, the effective date of coverage will coincide with the first day of a month unless enrollment is due to a qualifying event and a different date on or after the qualifying event is required to prevent a lapse in health care coverage.

(2) *Termination.* Procedures may be established for TYA coverage to be terminated as follows.

* * * * *

(v) Coverage may be terminated for young adult dependents upon request at any time by submitting a completed

request in the appropriate format in accordance with established procedures.

(vi) In accordance with the provisions of § 199.17(o)(2), coverage terminates for young adult dependents who fail to make premium payments in accordance with established procedures.

(vii) Absent a new qualifying event, young adults are not eligible to re-enroll in TYA until the next annual open season.

* * * * *

(f) *Administration.* The Director may establish other processes, policies and procedures for the effective administration of the TYA Program and may authorize exceptions to requirements of this section, if permitted.

Dated: September 20, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–20392 Filed 9–28–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2017–0172]

RIN 1625–AA00

Safety Zone; Pacific Ocean, Kilauea Lava Flow Ocean Entry on Southeast Side of Island of Hawaii, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending, for an additional six months, the existing temporary safety zone surrounding the entry of lava from the Kilauea volcano into the navigable waters of the Pacific Ocean on the southeast side of the Island of Hawaii, HI. The extension of this safety zone is necessary to protect persons and vessels from hazards associated with molten lava entering the ocean while the proposed rule is reviewed.

DATES: This rule is effective from September 28, 2017 through March 28, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2017–0172 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander John Bannon, Waterways Management Division, Coast Guard; telephone: 808–541–4359, email: *John.E.Bannon@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BLS Bureau of Labor Statistics
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section symbol
OMB Office of Management and Budget
RFA Regulatory Flexibility Act
SNPRM Supplemental notice of proposed rulemaking
TFR Temporary final rule
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is extending, for an additional six months, an existing temporary safety zone for the navigable waters surrounding the entry of lava from the Kilauea Volcano into the Pacific Ocean on the southeast side of the Island of Hawaii, HI. Extending this safety zone ensures mariners remain safe from the potential hazards associated with molten lava entering the ocean while the proposed rule is being reviewed. This safety zone will continue to encompass all waters within 300 meters (984 feet) of all entry points of lava flow into the ocean. Because the entry points of the lava vary, the safety zone location will also vary. Entry of persons or vessels into this safety zone remains prohibited, unless specifically authorized by the Captain of the Port (COTP) Honolulu, or his designated representative.

Lava flow that enters the ocean can be potentially hazardous to anyone near it, particularly when lava deltas collapse. A lava delta is new land that forms when lava accumulates above sea level, and extends from the existing base of a sea cliff. Persons near active lava flow entry sites incur potential hazards, particularly when lava deltas collapse. These hazards include, but are not limited to, plumes of hot, corrosive seawater laden with hydrochloric acid, and fine volcanic particles that can irritate the skin, eyes, and lungs; explosions of debris and eruptions of scalding water from hot rock entering the ocean; sudden lava delta collapses; and waves associated with these explosions and collapses.

Lava has been entering the ocean at the Kamokuna lava delta on Kilauea Volcano's south coast since July 2016. On December 31, 2016, a large portion of lava delta collapsed into the ocean at the Kamokuna entry point. Following this collapse, portions of the adjacent sea cliff fell into the ocean, producing localized waves, and showers of debris. As of March 2017, a new delta has begun to form at the Kamokuna ocean entry point. This lava delta continues to grow and collapse, and cracks parallel to the sea cliff surrounding it persist, indicating further collapses may occur with little or no warning.

On March 28, 2017, the Coast Guard established a temporary final rule (TFR) and put into place a safety zone for mariners near lava entry points to address the hazards of the lava entering the ocean. The TFR discussed Sector Honolulu's review of nearly 30 years of delta collapse and ejecta distance observations from the Hawaii Volcano Observatory records. The TFR was published in the April 3, 2017 **Federal Register** (82 FR 16109).

On April 3, 2017, the Coast Guard also published a notice of proposed rulemaking (NPRM) to establish a permanent safety zone that would encompass all waters extending 300 meters (984 feet) in every direction around all entry points of lava flow into the navigable waters surrounding the entry of lava from the Kilauea Volcano into the Pacific Ocean on the southeast side of the Island of Hawaii, HI (82 FR 16142). We determined that a radius of 300 meters was a reasonable, minimum high-hazard zone around a point of active lava flow entering the ocean. The safety zone allows the Coast Guard to impose and enforce restrictions on vessels operating closely to the lava entry area, which protects persons and vessels from the potential hazards associated with molten lava entering the ocean. The NPRM addressed this concern and invited the public to comment on the safety zone. The comment period, which ended on June 2, 2017, received 67 comments. On May 8, 2017, at a public meeting held in Hilo, HI, meeting participants discussed the proposed rule and NPRM's public comments.

During the period of the TFR, four tour operators and one photographer with economic ties to lava tourism petitioned the COTP Honolulu for entry within 300 meters of the high-hazard zone. They also requested and petitioned for various levels of entry distances—ranging from a close, safe distance to 50 meters—based on sea conditions resulting from the lava entry. The COTP Honolulu granted express authorization for entry within 300 meters to the five operators. The authorization included operational restrictions and other vessel safety criteria requirements considered by the

COTP Honolulu and will continue under the extended period of this TFR.

In order to review the overall impact of the final rule, a supplemental notice of proposed rulemaking (SNPRM) will be published, providing an additional 60 days for public comments and input. This TFR is necessary to promote navigational safety, provide for the safety of life and property, and facilitate the reasonable demands of commerce relating to tourism surrounding the lava entry points. It also provides an opportunity for further comment from the public. Upon publication of the SNPRM, we will invite additional public comments on this rulemaking.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Although we expect to review the SNPRM within 30 days of publication of this TFR, it would be impractical to delay the effective date of this rule. Immediate action is necessary to protect persons, vessels, and the public from the potential safety hazards associated with the ocean lava entry.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP Honolulu has determined that potential hazards associated with Kilauea's active lava flow entry into the Pacific Ocean on the southeast side of the Island of Hawaii, HI is a safety concern for anyone within 300 meters (984 feet) in every direction around the entry of lava flow. The purpose of this rule is to ensure the safety of the public and vessels traveling in the navigable waters covered by the safety zone.

IV. Discussion of Comments, Changes, and the Rule

This TFR extends the existing safety zone from September 28, 2017 through March 28, 2018, or until it is no longer necessary. If the safety zone terminates prior to March 28, 2018, the Coast Guard will provide notice via established notice to mariners.

In order to review the overall impact of the rule, the Coast Guard will publish an SNPRM providing an additional 60 days for comments on the proposed final rule. This TFR is necessary to promote navigational safety, provide for the safety of life and property, and facilitate the reasonable demands of commerce relating to tourism surrounding the lava entry points.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

Under Executive Order 12866, this rule has not been designated a ''significant regulatory action. Accordingly, the Office of Management and Budget (OMB) has not reviewed it. As this rule is a non-significant regulatory action, it is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017). A regulatory analysis follows.

This TFR extends, for an additional six months, the existing safety zone for the navigable waters surrounding the entry of lava from Kilauea volcano into the Pacific Ocean. The safety zone will remain to include waters within 300 meters (984 feet) of where lava enters the ocean. Entry of persons or vessels into the safety zone may only occur if granted permission by the COTP Honolulu, or his designated representative.

Lava has been entering the ocean at Kamokuna on Kilauea Volcano's south coast since July of 2016 and will continue to do so in the future. When lava enters the ocean, new hazards emerge: Plumes of corrosive seawater can irritate the skin, eyes, and lungs; explosions of debris and scalding water can injure passengers; sudden collapse of lava deltas can cause large waves potentially capsizing vessels. This TFR establishes a minimum safe operating distance in order to protect individuals and operators from the hazards of the Kilauea lava flow at sea.

This rule affects any vessel that would normally travel within 300 meters of points where lava reaches the ocean. Currently, four lava tour-boat operators have state licenses to operate from the Pohoiki Boat Ramp, the closest location to pick up passengers for tours of the Kilauea lava flow. The Coast Guard is also aware of one photographer who photographs the Kilauea lava flow. Since the implementation of the temporary safety zone, the COTP granted prior approval to these parties to enter the safety zone, so long as they comply with the conditions set by the COTP. These entities are required to notify the COTP by phone before each tour when entering the 300-meter safety zone.

When the Coast Guard published the original TFR on April 3, 2017, owners and operators were required to prepare and submit a written request to the COTP to enter the safety zone. The TFR is a continuation of the requirements extending the safety zone for an additional six months, and therefore, we are presenting the costs associated with this TFR.

First, the captain of a lava tour boat will initiate the request to enter the safety zone through an initial written request to the COTP. Based on waiver requests from the four state-licensed operations, the Coast Guard estimates it takes about 4-hours for an owner or operator to submit a written request to enter the safety zone. This includes the time it would take lava tour-boat owners or operators to respond to questions from the COTP concerning the waiver request. Lava tour-boat owners or operators are only required to make this written waiver request once for consideration by the COTP.

We obtained the mean hourly wage rate for a Captain of a lava tour boat from the Bureau of Labor Statistics (BLS) Occupational Employment Statistics National Occupational Employment and Wage Estimates for May 2016. Based on BLS's data, the mean hourly wage rate for Captains, Mates, and Pilots of Water Vessels with the North American Industry Classification System (NAICS) occupational code of 53–5021 in the ''Scenic and Sightseeing Transportation, Water'' industry is $24.42. Because this is an unloaded hourly wage rate, we added a load factor of 1.52 derived from the BLS March 2017 ''Employer Cost for Compensation'' databases to obtain a loaded hourly wage rate of $37.12. We estimate the one-time initial cost for an owner or operator to prepare a written request and respond to comments from

the Coast Guard to be about $148.47 ($37.12 per hour × 4 hours). We estimate the total cost of the temporary final rule to be about $593.88 ($148.47 × 4 lava tour-boat owners or operators).

Since all four tour operators and the photographer were each granted permission to enter the safety zone through an initial waiver request, the only potential cost to these tour operators is the cost of the initial request. Each owner or operator also will be required to notify the COTP before entering the safety zone. These entities shall notify the Coast Guard by phone; however, we do not estimate a cost for the call because the equipment already exists onboard the vessel and operators will make their calls in the normal course of a Captain's duty.

The Federal Government also will incur costs of this temporary final rule. Government costs to implement the rule include the one-time cost of reviewing the waiver requests (we do not estimate a cost for the time to receive a call from an owner or operator to when entering a safety zone because the COTP conducts this review in the normal course of the COTP duties). To process the written request, we estimate one non-commissioned officer with a rank of E–7, and three officers with ranks of O–4, O–5, and O–6 will take about one hour each to review the written request. Based on the labor rates in table 1, we estimate the total cost to the Government of the temporary final rule to be about $378.00. Table 1 below summarizes these Government costs.[1]

TABLE 1—TOTAL GOVERNMENT COSTS OF THE TEMPORARY FINAL RULE

Rank	Wage rate	Labor hours	Total cost
E–7	$65	1	$65
O–4	92	1	92
O–5	104	1	104
O–6	117	1	117
Total	.....	4	378

We estimate the total cost of this temporary final rule to industry and the Government to be about $972 ($593.88 for lava tour-boat owners or operators + $378 for the Government).

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Rules that are exempt from the Administrative Procedures Act include interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or when the agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest. When an agency is not required to publish an NPRM for a rule, the RFA does not require an agency to prepare a regulatory flexibility analysis. The Coast Guard was not required to publish an NPRM for this rule for the reasons stated in section II. ''Background Information and Regulatory History'' and therefore is not required to publish a regulatory flexibility analysis.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting 6 months that will prohibit persons and vessels from entry into the 300 meters (984 feet) safety zone extending in all directions around the entry of lava flow into the Pacific Ocean. This safety zone is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

[1] We obtained the hourly wage rates from Enclosure (2) of Commandant Instruction 7310.1R (29 March 2017) using the ''In Government Rate''.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

Title 33—Navigation and Navigable Waters

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T14–0172 to read as follows:

§ 165.T14–0172 Safety Zone; Pacific Ocean, Kilauea Lava Flow Ocean Entry on Southeast Side of Island of Hawaii, HI.

(a) *Location.* The safety zone area is located within the Captain of the Port (COTP) Zone (see 33 CFR 3.70–10) and it encompasses one primary area from the surface of the water to the ocean floor at the Kilauea active lava flow entry into the Pacific Ocean on the southeast side of the Island of Hawaii, HI. The entry point of the lava does change based on flow; however, the safety zone will encompass all waters extending 300 meters (984 feet) in all directions around the entry point of lava flow into the ocean associated with the lava flow at the Kamokuna lava delta.

(b) *Enforcement period.* This rule is effective from September 28, 2017, through March 28, 2018.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zones.

(d) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply to the safety zone created by this temporary final rule.

(1) All persons and vessels are required to comply with the general regulations governing safety zones found in this part.

(2) Entry into or remaining in this safety zone is prohibited unless authorized by the COTP Honolulu or his designated representative.

(3) Persons or vessels desiring to transit the safety zone identified in paragraph (a) of this section may contact the COTP Honolulu through his designated representatives at the Command Center via telephone: 808–842–2600 and 808–842–2601; fax: 808–842–2642; or on VHF channel 16 (156.8 Mhz) to request permission to transit the safety zone. All safety zone transit requests must be in writing. If permission is granted, all persons and vessels must comply with the instructions of the COTP Honolulu or his designated representative and proceed at the minimum speed necessary to maintain a safe course while in the safety zone.

(4) The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

Dated: September 25, 2017.

M.C. Long,

Captain, U.S. Coast Guard, Captain of the Port Honolulu.

[FR Doc. 2017–20902 Filed 9–28–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0874]

Safety Zone; Allegheny River Miles 0.0–1.0, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the subject safety zone for the Pittsburgh Downtown Partnership/Light Up Night Fireworks on all navigable waters of the Allegheny River miles 0.0 to 1.0, extending the entire width of the river. The zone is needed to protect vessels transiting the area and event spectators from the hazards associated with the barge-based fireworks display. During the enforcement period, entry into, transiting, or anchoring in the safety zone is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels, unless specifically authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative.

DATES: The regulations in 33 CFR 165.801 Table 1, Sector Ohio Valley, No. 37 will be enforced on November 17, 2017.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone for the Pittsburgh Downtown Partnership/Light Up Night Fireworks on the Allegheny River, listed in 33 CFR 165.801 Table 1, Sector Ohio Valley, No. 37 on November 17, 2017. Entry into the safety zone is prohibited unless authorized by the COTP or a designated representative. Persons or vessels desiring to enter into or passage through the safety zone must request permission from the COTP or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

This notice of enforcement is issued under authority of 33 CFR 165.801 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and updates via Marine Information Broadcasts.

Dated: September 14, 2017.

L. McClain, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2017–20931 Filed 9–28–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0679]

Safety Zone; North Atlantic Ocean, Ocean City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation; change of enforcement date.

SUMMARY: On August 7, 2017, the Coast Guard provided notice in the **Federal Register** that the agency would enforce

the North Atlantic Ocean, Ocean City, NJ, safety zone from 9:00 p.m. through 11:59 p.m. on October 10, 2017. The purpose of this document is to announce a change in the enforcement date. The zone will be enforced on October 7, 2017, instead of October 10, 2017.

DATES: The regulations in 33 CFR 165.506 will be enforced from 9 p.m. to 11:59 p.m. on October 7, 2017, for the safety zone listed as (a.)11 in the Table to § 165.506.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, you may call or email MST2 Amanda Boone, Sector Delaware Bay Waterways Management Division, U.S. Coast Guard; telephone 215–271–4889, email *Amanda.N.Boone@USCG.mil.*

SUPPLEMENTARY INFORMATION: Please refer to the notice of enforcement published in the **Federal Register** on August 7, 2017 (82 FR 36688), FR Doc. 2017–16506.

Dated: September 22, 2017.

Scott E. Anderson,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2017–20900 Filed 9–28–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 682, and 685

Federal Student Aid Programs (Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and the Federal Direct Loan Program)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Updated waivers and modifications of statutory and regulatory requirements.

SUMMARY: The Secretary is issuing updated waivers and modifications of statutory and regulatory requirements governing the Federal student financial aid programs under the authority of the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act). The HEROES Act requires the Secretary to publish a document in the **Federal Register** announcing the waivers or modifications of statutory or regulatory requirements applicable to the student financial assistance programs under title IV of the Higher Education Act of 1965, as amended (HEA), to assist individuals who are performing qualifying military service, and individuals who are affected by a disaster, war or other military operation, or national emergency, as described in the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: The waivers and modifications begin on September 29, 2017. The waivers and modifications in this document expire on September 30, 2022.

FOR FURTHER INFORMATION CONTACT: For provisions related to the title IV loan programs (Federal Perkins Loan Program, Federal Family Education Loan (FFEL) Program, and Federal Direct Loan (Direct Loan) Program): Barbara Hoblitzell, U.S. Department of Education, 400 Maryland Ave. SW., Room 6W253, Washington, DC 20202. Telephone: (202) 453–7583 or by email: *Barbara.Hoblitzell@ed.gov* or Brian Smith, U.S. Department of Education, 400 Maryland Ave. SW., Room 7E222, Washington, DC 20202. Telephone: (202) 453–7440 or by email: *Brian.Smith@ed.gov.* For other provisions: Wendy Macias, U.S. Department of Education, 400 Maryland Ave. SW., Room 6C111, Washington, DC 20202. Telephone: (202) 203–9155 or by email: *Wendy.Macias@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) by contacting Wendy Macias, U.S. Department of Education, 400 Maryland Ave. SW., Room 6C111, Washington, DC 20202. Telephone: (202) 203–9155 or by email: *Wendy.Macias@ed.gov.*

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on December 12, 2003 (68 FR 69312), the Secretary exercised the authority under the HEROES Act (Pub. L. 108–76, 20 U.S.C. 1098bb(b)) and announced waivers and modifications of statutory and regulatory provisions designed to assist ''affected individuals.'' Under 20 U.S.C. 1098ee(2), the term ''affected individual'' means an individual who:

- Is serving on active duty during a war or other military operation or national emergency;
- Is performing qualifying National Guard duty during a war or other military operation or national emergency;
- Resides or is employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency; or
- Suffered direct economic hardship as a direct result of a war or other military operation or national emergency, as determined by the Secretary.

Please note that these waivers and modifications do not apply to an individual who resides or is employed in an area declared a disaster area by any Federal, State, or local official unless that declaration has been made in connection with a national emergency.

Under the HEROES Act, the Secretary's authority to provide the waivers and modifications would have expired on September 30, 2005. However, Public Law 109–78, enacted on September 30, 2005, extended the expiration date of the Secretary's authority to September 30, 2007. Accordingly, in a document in the **Federal Register** published on October 20, 2005 (70 FR 61037), the Secretary extended the expiration of the waivers and modifications published on December 12, 2003, to September 30, 2007.

Public Law 110–93, enacted on September 30, 2007, eliminated the September 30, 2007, expiration date of the HEROES Act, thereby making permanent the Secretary's authority to issue waivers and modifications of statutory and regulatory provisions.

On December 26, 2007, the Secretary published a document in the **Federal Register** (72 FR 72947) extending the waivers and modifications published on December 12, 2003, to September 30, 2012. In that document, the Secretary also indicated an intent to review the waivers and modifications published on December 12, 2003, in light of statutory and regulatory changes and to consider whether to change some or all of the published waivers and modifications.

In a document in the **Federal Register** published on September 27, 2012 (77 FR 59311), the Secretary published updated waivers and modifications to reflect the results of the review. Under that document, the updated waivers and modifications expire on September 30, 2017.

The Secretary is updating the waivers and modifications to reflect statutory and regulatory changes that have occurred since the September 27, 2012, document was published. The waivers and modifications in this document will expire on September 30, 2022. With a few limited exceptions, the waivers and modifications in this document are the same waivers and modifications published in the September 27, 2012, **Federal Register** document. However,

the 2012 waivers and modifications have been updated in the following areas:

(1) The Secretary updated the need analysis modification to reflect the change in which tax year's information is collected on the Free Application for Federal Student Aid (FAFSA) and used to calculate the applicant's expected family contribution (EFC). Previously when completing a FAFSA, a student provided income information from the most recently completed tax year prior to the beginning of the financial aid application cycle (*e.g.,* 2015 income information for the 2016–2017 FAFSA). Beginning with the 2017–2018 FAFSA, income information is collected from one tax year earlier—referred to as the ''prior-prior year.'' This change was made under the authority of section 480(a)(1)(B) of the HEA. This modification was also updated to make it consistent with the modification to professional judgment included in this document, which provides three options that a financial aid administrator (FAA) may use to make adjustments to the values of the items used to calculate the EFC to reflect a student's special circumstances.

(2) For the professional judgment modification, the Secretary clarified that in addition to using income information from the first or second calendar year of the award year, an institution may use another annual income that more accurately reflects the family's current financial circumstances.

(3) The Secretary updated the modifications related to verification of adjusted gross income (AGI) and U.S. income tax paid so that affected individuals under this category are no longer required to provide a signature on the statement certifying that he or she has not filed an income tax return or a request for a filing extension because he or she was called up for active duty or for qualifying National Guard duty during a war or other military operation or national emergency; or certifying the amount of AGI and U.S. income tax paid for the specified year.

(4) The Secretary extended the waiver assisting affected individuals with regard to the annual reevaluation requirements for FFEL and Direct Loan borrowers who are repaying loans under the Income-Based Repayment (IBR) plan, and Direct Loan borrowers who are repaying loans under the Income-Contingent Repayment (ICR) plan to include borrowers who are repaying Direct Loans under the Pay As You Earn (PAYE) or Revised Pay As You Earn (REPAYE) repayment plans.

(5) For the fourth category of affected individuals to which waivers and modifications apply, as described later in this document, the Secretary removed the reference to spouses of affected individuals who are serving on active duty or performing qualifying National Guard duty during a war or other military operation or national emergency, since the waivers under this category only pertain to the dependent student of such affected individuals.

(6) The Secretary updated the waiver related to verification signature requirements to waive the requirement for a parental signature on any verification documentation required for title IV eligibility for a dependent student because of the parent's status as an affected individual.

(7) The Secretary made a technical change to the waiver related to the section on required signatures on the FAFSA, the Student Aid Report (SAR), and the Institutional Student Information Record (ISIR), replacing the reference to ''ISIR'' with ''or submitting corrections electronically''. The Secretary also changed the reference to ''responsible parent'' to ''relevant parent'' to mean the parent whose information is reported on the FAFSA.

The Secretary is issuing these waivers and modifications under the authority of the HEROES Act, 20 U.S.C. 1098bb(a). In accordance with the HEROES Act, the Secretary is providing the waivers and modifications of statutory and regulatory requirements applicable to the student financial assistance programs under title IV of the HEA that the Secretary believes are appropriate to ensure that:

- Affected individuals who are recipients of student financial assistance under title IV are not placed in a worse position financially in relation to that financial assistance because they are affected individuals;
- Affected individuals who are recipients of student financial assistance are not unduly subject to administrative burden or inadvertent, technical violations or defaults;
- Affected individuals are not penalized when a determination of need for student financial assistance is calculated;
- Affected individuals are not required to return or repay an overpayment of grant funds based on the HEA's Return of Title IV Funds provision; and
- Entities that participate in the student financial assistance programs under title IV of the HEA and that are located in areas that are declared disaster areas by any Federal, State, or local official in connection with a national emergency, or whose operations are significantly affected by such a disaster, receive temporary relief from administrative requirements.

In 20 U.S.C. 1098bb(b)(1), the HEROES Act further provides that section 437 of the General Education Provisions Act (20 U.S.C. 1232) and section 553 of the Administrative Procedure Act (5 U.S.C. 553) do not apply to the contents of this document.

The following terms used in this document are defined in 20 U.S.C. 1098ee: Active duty, military operation, national emergency, qualifying National Guard duty during a war or other military operation or national emergency, and serving on active duty during a war or other military operation or national emergency.

The following waivers and modifications are grouped into four categories, according to the affected individuals to whom they apply.

Category 1: The Secretary is waiving or modifying the following requirements of title IV of the HEA and the Department of Education's (Department's) regulations for ALL affected individuals.

Need Analysis

Section 480 of the HEA provides that, in the calculation of an applicant's EFC, the term ''total income,'' which is used in the determination of ''annual adjusted family income'' and ''available income,'' is equal to the applicant's, the applicant's spouse's, or the applicant's parent's AGI plus untaxed income and benefits for the second preceding tax year minus excludable income. The HEROES Act allows an institution to substitute AGI plus untaxed income and benefits received in the first calendar year of the award year for which such determination is made for any affected individual, and for his or her spouse and dependents, if applicable, in order to reflect more accurately the financial condition of an affected individual and his or her family. The Secretary has determined that an institution has the option of using the applicant's original EFC (the EFC based on the income and tax information reported on the FAFSA), the EFC based on the data from the first calendar year of the award year, or the EFC based on another annual income that more accurately reflects the family's current financial circumstances.

If an institution chooses to use anything other than the original EFC, it should use the administrative professional judgment options discussed in the following section.

Professional Judgment

Section 479A of the HEA specifically gives the FAA at an institution the authority to use professional judgment to make, on a case-by-case basis, adjustments to the cost of attendance or to the values of the items used in calculating the EFC to reflect a student's special circumstances. The Secretary is modifying this provision by removing the requirement that adjustments be made on a case-by-case basis for affected individuals. The use of professional judgment in Federal need analysis is discussed in the Federal Student Aid Handbook available at *www.ifap.ed.gov.*

The Secretary encourages FAAs to use professional judgment to reflect more accurately the financial need of affected individuals. To that end, the Secretary encourages institutions to determine an affected individual's need using one of the options listed below:

- Using the AGI plus untaxed income and benefits received in the first calendar year of the award year;
- Using another annual income that more accurately reflects the family's current financial circumstances; or
- Making no modifications.

The FAA must clearly document the reasons for any adjustment and the facts supporting the decision. In almost all cases, the FAA should have documentation from a third party with knowledge of the student's special circumstances. As usual, any professional judgment decisions made by an FAA that affect a student's eligibility for a subsidized student financial assistance program must be reported to the Central Processing System.

Return of Title IV Funds—Grant Overpayments Owed by the Student

Section 484B(b)(2) of the HEA and 34 CFR 668.22(h)(3)(ii) require a student to return or repay, as appropriate, unearned grant funds for which the student is responsible under the Return of Title IV Funds calculation. For a student who withdraws from an institution because of his or her status as an affected individual, the Secretary is waiving these statutory and regulatory requirements so that a student is not required to return or repay any overpayment of grant funds based on the Return of Title IV Funds provisions.

For these students, the Secretary also waives 34 CFR 668.22(h)(4), which:

- Requires an institution to notify a student of a grant overpayment and the actions the student must take to resolve the overpayment;
- Denies eligibility to a student who owes a grant overpayment and does not take an action to resolve the overpayment; and
- Requires an institution to refer a grant overpayment to the Secretary under certain conditions.

Therefore, an institution is not required to contact the student, notify the National Student Loan Data System, or refer the overpayment to the Secretary. However, the institution must document in the student's file the amount of any overpayment as part of the documentation of the application of this waiver.

The student is not required to return or repay an overpayment of grant funds based on the Return of Title IV Funds provision. Therefore, an institution must not apply any title IV credit balance to the grant overpayment prior to: Using a credit balance to pay authorized charges; paying any amount of the title IV credit balance to the student or parent, in the case of a parent PLUS loan; or using the credit balance to reduce the student's title IV loan debt (with the student's authorization) as provided in Dear Colleague Letter GEN–04–03 (February 2004; revised November 2004).

Verification of AGI and U.S. Income Tax Paid

Pursuant to 34 CFR 668.57(a)(3)(ii), for an individual who is required to file a U.S. income tax return and has been granted a filing extension by the Internal Revenue Service (IRS), an institution must accept, in lieu of an income tax return for verification of AGI or U.S. income tax paid:

- A copy of IRS Form 4868, ''Application for Automatic Extension of Time to File U.S. Individual Income Tax Return,'' that the individual filed with the IRS for the specified year, or a copy of the IRS's approval of an extension beyond the automatic six-month extension if the individual requested an additional extension of the filing time; and
- A copy of each IRS Form W–2 that the individual received for the specified year or, for a self-employed individual, a statement signed by the individual certifying the amount of AGI and U.S. income tax paid for the specified year.

The Secretary is modifying the requirement of this provision so that the submission of a copy of IRS Form 4868 or a copy of the IRS's approval of an extension beyond the six-month extension is not required if an affected individual has not filed an income tax return by the filing deadline.

For these individuals, an institution must accept, in lieu of an income tax return for verification of AGI and U.S. income tax paid:

- A statement from the individual certifying that he or she has not filed an income tax return or a request for a filing extension because he or she was called up for active duty or for qualifying National Guard duty during a war or other military operation or national emergency; and
- A copy of each W–2 received for the specified year or, for a self-employed individual, a statement by the individual certifying the amount of AGI and U.S. income tax paid for the specified year.

An institution may request that an individual granted a filing extension submit tax information using the IRS Data Retrieval Tool, or by obtaining a tax return transcript from the IRS that lists tax account information for the specified year after the income tax return is filed. If an institution receives the tax information, it must verify the income information of the tax filer(s).

Category 2: The Secretary is waiving or modifying requirements in the following provisions of title IV of the HEA and the Department's regulations for affected individuals who are serving on active duty or performing qualifying National Guard duty during a war or other military operation or national emergency, or who reside or are employed in a disaster area.

Return of Title IV Funds—Post-Withdrawal Disbursements of Loan Funds

Under 34 CFR 668.22(a)(6)(iii)(A)(*5*) and (D), a student (or parent for a parent PLUS loan) must be provided a post-withdrawal disbursement of a title IV loan if the student (or parent) responds to an institution's notification of the post-withdrawal disbursement within 14 days of the date that the institution sent the notice, or a later deadline set by the institution. If a student or parent submits a late response, an institution may, but is not required to, make the post-withdrawal disbursement.

The Secretary is modifying this requirement so that, for a student who withdraws because of his or her status as an affected individual in this category and who is eligible for a post-withdrawal disbursement, the 14-day time period in which the student (or parent) must normally respond to the offer of the post-withdrawal disbursement is extended to 45 days, or to a later deadline set by the institution. If the student or parent submits a response after the designated period, the institution may, but is not required to, make the post-withdrawal disbursement. As required under the current regulations, if the student or parent submits the timely response

instructing the institution to make all or a portion of the post-withdrawal disbursement, or the institution chooses to make a post-withdrawal disbursement based on receipt of a late response, the institution must disburse the funds within 180 days of the date of the institution's determination that the student withdrew.

Leaves of Absence

Under 34 CFR 668.22(d)(3)(iii)(B), a student is required to provide a written, signed, and dated request, which includes the reason for that request, for an approved leave of absence prior to the leave of absence. However, if unforeseen circumstances prevent a student from providing a prior written request, the institution may grant the student's request for a leave of absence if the institution documents its decision and collects the written request at a later date. It may be appropriate in certain limited cases for an institution to provide an approved leave of absence to a student who must interrupt his or her enrollment because he or she is an affected individual in this category. Therefore, the Secretary is waiving the requirement that the student provide a written request for affected individuals who have difficulty providing a written request as a result of being an affected individual in this category. The institution's documentation of its decision to grant the leave of absence must include, in addition to the reason for the leave of absence, the reason for waiving the requirement that the leave of absence be requested in writing.

Treatment of Title IV Credit Balances When a Student Withdraws

Under 34 CFR 668.164(h)(2), an institution must pay any title IV credit balance to the student, or parent in the case of a parent PLUS loan, as soon as possible, but no later than: 14 days after the balance occurred if the balance occurred after the first day of class of a payment period; or 14 days after the first day of class of a payment period if the balance occurred on or before the first day of class of that payment period. If the student (or parent) has provided authorization, an institution may use a title IV credit balance to reduce the borrower's total title IV loan debt, not just the title IV loan debt for the period for which the Return of Title IV Funds calculation is performed.

For students who withdraw because they are affected individuals in this category, the Secretary finds that the institution has met the 14-day requirement under 34 CFR 668.164(h)(2) if, within that timeframe, the institution attempts to contact the student (or parent) to suggest that the institution be authorized to return the credit balance to the loan program(s).

Based upon the instructions of the student (or parent), the institution must promptly return the funds to the title IV loan programs or pay the credit balance to the student (or parent).

In addition, if an institution chooses to attempt to contact the student (or parent) for authorization to apply the credit balance to reduce the student's title IV loan debt, it must allow the student (or parent) 45 days to respond. If there is no response within 45 days, the institution must promptly pay the credit balance to the student (or parent) or return the funds to the title IV programs if the student (or parent) cannot be located.

Consistent with the guidance provided in Dear Colleague Letter GEN–04–03 (February 2004; revised November 2004), the institution may also choose to pay the credit balance to the student (or parent) without first requesting permission to apply the credit balance to reduce the student's title IV loan debt.

Cash Management—Student or Parent Request for Loan or TEACH Grant Cancellation

Under 34 CFR 668.165(a)(4)(ii), an institution must return loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, if the institution receives a loan or TEACH Grant cancellation request from a student or parent:

- By the later of the first day of a payment period or 14 days after the date the institution notifies the student or parent of his or her right to cancel all or a portion of a loan or TEACH Grant, if the institution obtains affirmative confirmation from the student under 34 CFR 668.165(a)(6)(i); or
- Within 30 days of the date the institution notifies the student or parent of his or her right to cancel all or a portion of a loan, if the institution does not obtain affirmative confirmation from the student under 34 CFR 668.165(a)(6)(i).

Under 34 CFR 668.165(a)(4)(iii), if an institution receives a loan cancellation request from a borrower after the period specified in 34 CFR 668.165(a)(4)(ii), the institution may, but is not required to, comply with the request. For a student or parent who is an affected individual in this category, the Secretary is modifying this requirement so that an institution must allow at least 60 days for the student or parent to request the cancellation of all or a portion of a loan or TEACH Grant for which proceeds have been credited to the account at the institution. If an institution receives a loan or TEACH Grant cancellation request after the 60-day period, the institution may, but is not required to, comply with the request.

Cash Management—Student and Parent Authorizations

Under 34 CFR 668.165(b)(1), an institution must obtain a written authorization from a student or parent, as applicable, to:

- Use title IV funds to pay for educationally related charges incurred by the student at the institution other than charges for tuition and fees and, as applicable, room and board; and
- Hold on behalf of the student or parent any title IV funds that would otherwise be paid directly to the student or parent.

The Secretary is modifying these requirements to permit an institution to accept an authorization provided by a student (or parent for a parent PLUS loan) orally, rather than in writing, if the student or parent is prevented from providing a written authorization because of his or her status as an affected individual in this category. The institution must document the oral consent or authorization.

Satisfactory Academic Progress

Institutions may, in cases where a student failed to meet the institution's satisfactory academic progress standards as a direct result of being an affected individual in this category, apply the exception provision of ''other special circumstances'' contained in 34 CFR 668.34(a)(9)(ii).

Borrowers in a Grace Period

Sections 428(b)(7)(D) and 464(c)(7) of the HEA and 34 CFR 674.31(b)(2)(i)(C), 682.209(a)(5), and 685.207(b)(2)(ii) and (c)(2)(ii) exclude from a Federal Perkins Loan, FFEL, or Direct Loan borrower's (title IV borrower's) initial grace period any period during which a borrower who is a member of an Armed Forces reserve component is called or ordered to active duty for a period of more than 30 days. The statutory and regulatory provisions further require that any single excluded period may not exceed three years and must include the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Lastly, any borrower who is in a grace period when called or ordered to active duty is entitled to another six- or nine-month grace period, as applicable, upon completion of the excluded period of service.

The Secretary is modifying these statutory and regulatory requirements to exclude from a title IV borrower's initial

grace period, any period, not to exceed three years, during which a borrower is an affected individual in this category. Any excluded period must include the time necessary for an affected individual in this category to resume enrollment at the next available enrollment period.

Borrowers in an ''In-School'' Period

A title IV borrower is considered to be in an ''in-school'' status and is not required to make payments on a title IV loan that has not entered repayment as long as the borrower is enrolled at an eligible institution on at least a half-time basis. Under sections 428(b)(7) and 464(c)(1)(A) of the HEA and 34 CFR 674.31(b)(2), 682.209(a), and 685.207(b), (c), and (e)(2) and (3), when a title IV borrower ceases to be enrolled at an eligible institution on at least a half-time basis, the borrower is obligated to begin repayment of the loan after a six- or nine-month grace period, depending on the title IV loan program and the terms of the borrower's promissory note. The Secretary is modifying the statutory and regulatory requirements that obligate an ''in-school'' borrower who has dropped below half-time status to begin repayment if the borrower is an affected individual in this category, by requiring the holder of the loan to maintain the loan in an ''in-school'' status for a period not to exceed three years, including the time necessary for the borrower to resume enrollment in the next regular enrollment period, if the borrower is planning to go back to school. The Secretary will pay interest that accrues on a subsidized Stafford Loan as a result of the extension of a borrower's in-school status under this modification.

Borrowers in an In-School, Graduate Fellowship, or Rehabilitation Training Program Deferment

Under sections 427(a)(2)(C)(i), 428(b)(1)(M)(i), 428B(a)(2) and (d)(1), 428C(b)(4)(C), 455(f)(2)(A), and 464(c)(2)(A)(i) of the HEA and 34 CFR 674.34(b)(1), 682.210(b)(1)(i), (ii), and (iii), 682.210(s)(2), (3), and (4), 685.204(b), 685.204(d), and 685.204(e), a title IV borrower is eligible for a deferment on the loan during periods after the commencement or resumption of the repayment period on the loan when the borrower is enrolled and in attendance as a regular student on at least a half-time basis (or full-time, if required by the terms of the borrower's promissory note) at an eligible institution; enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program; engaged in an eligible rehabilitation training program; or, for Federal Perkins Loan borrowers, engaged in graduate or post-graduate fellowship-supported study outside the United States. The borrower's deferment period ends when the borrower no longer meets one of the above conditions.

The Secretary is waiving the statutory and regulatory eligibility requirements for this deferment for title IV borrowers who were required to interrupt a graduate fellowship or rehabilitation training program deferment, or who were in an in-school deferment but who left school, because of their status as an affected individual in this category. The holder of the loan is required to maintain the loan in the graduate fellowship, rehabilitation training program, or in-school deferment status for a period not to exceed three years during which the borrower is an affected individual in this category. This period includes the time necessary for the borrower to resume his or her graduate fellowship program, resume a rehabilitation training program, or resume enrollment in the next regular enrollment period if the borrower returns to school. The Secretary will pay interest that accrues on a FFEL subsidized Stafford Loan or not charge interest on a Direct subsidized Stafford Loan as a result of extending a borrower's eligibility for deferment under this waiver.

Forbearance

Under section 464(e) of the HEA and 34 CFR 674.33(d)(2), there is a three-year cumulative limit on the length of forbearances that a Federal Perkins Loan borrower can receive. To assist Federal Perkins Loan borrowers who are affected individuals in this category, the Secretary is waiving these statutory and regulatory requirements so that any forbearance based on a borrower's status as an affected individual in this category is excluded from the three-year cumulative limit.

Under section 464(e) of the HEA and 34 CFR 674.33(d)(2) and (3), a school must receive a request and supporting documentation from a Federal Perkins Loan borrower before granting the borrower a forbearance, the terms of which must be in the form of a written agreement. The Secretary is waiving these statutory and regulatory requirements to require an institution to grant forbearance based on the borrower's status as an affected individual in this category for a one-year period, including a three-month ''transition period'' immediately following, without supporting documentation or a written agreement, based on the written or oral request of the borrower, a member of the borrower's family, or another reliable source. The purpose of the three-month transition period is to assist borrowers so that they will not be required to reenter repayment immediately after they are no longer affected individuals in this category. In order to grant the borrower forbearance beyond the initial twelve- to fifteen-month period, supporting documentation from the borrower, a member of the borrower's family, or another reliable source is required.

Under 34 CFR 682.211(i)(1), a FFEL borrower who requests forbearance because of a military mobilization must provide the loan holder with documentation showing that he or she is subject to a military mobilization. The Secretary is waiving this requirement to allow a borrower who is not otherwise eligible for the military service deferment under 34 CFR 682.210(t), 685.204(h), and 674.34(h) to receive forbearance at the request of the borrower, a member of the borrower's family, or another reliable source for a one-year period, including a three-month transition period that immediately follows, without providing the loan holder with documentation. To grant the borrower forbearance beyond this period, documentation supporting the borrower's military mobilization must be submitted to the loan holder.

The Secretary will apply the forbearance waivers and modifications in this section to loans held by the Department.

Collection of Defaulted Loans

In accordance with 34 CFR part 674, subpart C—Due Diligence, and 682.410(b)(6), schools and guaranty agencies must attempt to recover amounts owed from defaulted Federal Perkins Loan and FFEL borrowers, respectively. The Secretary is waiving the regulatory provisions that require schools and guaranty agencies to attempt collection on defaulted loans for the time period during which the borrower is an affected individual in this category and for a three-month transition period. The school or guaranty agency may stop collection activities upon notification by the borrower, a member of the borrower's family, or another reliable source that the borrower is an affected individual in this category. Collection activities must resume after the borrower has notified the school or guaranty agency that he or she is no longer an affected individual and the three-month transition period has expired. The loan holder must document in the loan file why it has

suspended collection activities on the loan, and the loan holder is not required to obtain evidence of the borrower's status while collection activities have been suspended. The Secretary will apply the waivers described in this paragraph to loans held by the Department.

Loan Cancellation

Depending on the loan program, borrowers may qualify for loan cancellation if they are employed fulltime in specified occupations, such as teaching or in law enforcement, pursuant to sections 428J, 460(b)(1), and 465(a)(2)(A)–(M) and (3) of the HEA, and 34 CFR 674.53, 674.55, 674.55(b), 674.56, 674.57, 674.58, 674.60, 682.216, and 685.217. Generally, to qualify for loan cancellation, borrowers must perform uninterrupted, otherwise qualifying service for a specified length of time (for example, one year) or for consecutive periods of time, such as five consecutive years.

For borrowers who are affected individuals in this category, the Secretary is waiving the requirements that apply to the various loan cancellations that such periods of service be uninterrupted or consecutive, if the reason for the interruption is related to the borrower's status as an affected individual in this category. Therefore, the service period required for the borrower to receive or retain a loan cancellation for which he or she is otherwise eligible will not be considered interrupted by any period during which the borrower is an affected individual in this category, including the three-month transition period. The Secretary will apply the waivers described in this paragraph to loans held by the Department.

Rehabilitation of Defaulted Loans

A borrower of a Direct Loan or FFEL Loan must make nine voluntary on-time, monthly payments over ten consecutive months to rehabilitate a defaulted loan in accordance with section 428F(a) of the HEA and 34 CFR 682.405 and 685.211(f). Federal Perkins Loan borrowers must make nine consecutive, on-time monthly payments to rehabilitate a defaulted Federal Perkins Loan in accordance with section 464(h)(1)(A) of the HEA and 34 CFR 674.39. To assist title IV borrowers who are affected individuals in this category, the Secretary is waiving the statutory and regulatory requirements that payments made to rehabilitate a loan must be consecutive or made over no more than ten consecutive months. Loan holders should not treat any payment missed during the time that a borrower is an affected individual in this category, or during the three-month transition period, as an interruption in the number of monthly, on-time payments required to be made consecutively, or the number of consecutive months in which payment is required to be made, for loan rehabilitation. If there is an arrangement or agreement in place between the borrower and loan holder and the borrower makes a payment during this period, the loan holder must treat the payment as an eligible payment in the required series of payments. When the borrower is no longer an affected individual in this category, and the three-month transition period has expired, the required sequence of qualifying payments may resume at the point they were discontinued as a result of the borrower's status. The Secretary will apply the waivers described in this paragraph to loans held by the Department.

Reinstatement of Title IV Eligibility

Under sections 428F(b) and 464(h)(2) of the HEA and under the definition of ''satisfactory repayment arrangement'' in 34 CFR 668.35(a)(2), 674.2(b), 682.200(b), and 685.102(b), a defaulted title IV borrower may make six consecutive, on-time, voluntary, full, monthly payments to reestablish eligibility for title IV student financial assistance. To assist title IV borrowers who are affected individuals in this category, the Secretary is waiving statutory and regulatory provisions that require the borrower to make consecutive payments to reestablish eligibility for title IV student financial assistance. Loan holders should not treat any payment missed during the time that a borrower is an affected individual in this category as an interruption in the six consecutive, on-time, voluntary, full, monthly payments required for reestablishing title IV eligibility. If there is an arrangement or agreement in place between the borrower and loan holder and the borrower makes a payment during this period, the loan holder must treat the payment as an eligible payment in the required series of payments. When the borrower is no longer an affected individual or in the three-month transition period for purposes of this document, the required sequence of qualifying payments may resume at the point they were discontinued as a result of the borrower's status. The Secretary will apply the waivers described in this paragraph to loans held by the Department.

Consolidation of Defaulted Loans

Under the definition of ''satisfactory repayment arrangement'' in 34 CFR 685.102(b), a defaulted FFEL or Direct Loan borrower may establish eligibility to consolidate a defaulted loan in the Direct Consolidation Loan Program by making three consecutive, voluntary, on-time, monthly, full payments on the loan. The Secretary is waiving the regulatory requirement that such payments be consecutive. FFEL loan holders should not treat any payment missed during the time that a borrower is an affected individual in this category as an interruption in the three consecutive, voluntary, monthly, full, on-time payments required for establishing eligibility to consolidate a defaulted loan in the Direct Consolidation Loan Program. If there is an arrangement or agreement in place between the borrower and loan holder and the borrower makes a payment during this period, the loan holder must treat the payment as an eligible payment in the required series of payments. When the borrower is no longer an affected individual in this category or in the three-month transition period, the required sequence of qualifying payments may resume at the point they were discontinued as a result of the borrower's status as an affected individual. The Secretary will apply the waivers described in this paragraph to loans held by the Department.

Annual Income Documentation Requirements for Direct Loan and FFEL Borrowers Under the IBR, PAYE, REPAYE, and ICR Plans

Section 493C(c) of the HEA requires the Secretary to establish procedures for annually determining a borrower's eligibility for the IBR plan, including verification of a borrower's annual income and the annual amount due on the total amount of the borrower's loans. Section 455(e)(1) of the HEA provides that the Secretary may obtain such information as is reasonably necessary regarding the income of a borrower for the purpose of determining the annual repayment obligation of the borrower under an income-contingent repayment plan. Under 34 CFR 682.215(e), 685.209(a)(5), (b)(3), and (c)(4), and 685.221(e), borrowers repaying under the IBR, PAYE, REPAYE, or ICR plans must annually provide their loan holder with documentation of their income and family size so that the loan holder may, if necessary, adjust the borrower's monthly payment amount based on changes in the borrower's income or family size. Borrowers are required to provide information about their annual

income and family size to the loan holder each year by a deadline specified by the holder. If a borrower who is repaying his or her loans under the IBR, PAYE, or ICR plans fails to provide the required information by the specified deadline, the borrower's monthly payment amount is adjusted and is no longer based on the borrower's income. This adjusted monthly payment amount is generally higher than the payment amount that was based on the borrower's income.

The Secretary is waiving these statutory and regulatory provisions to require loan holders to maintain an affected borrower's payment at the most recently calculated IBR, PAYE, REPAYE, or ICR monthly payment amount for up to a three-year period, including a three-month transition period immediately following the three-year period, if the borrower's status as an affected individual in this category has prevented the borrower from providing documentation of updated income and family size by the specified deadline.

Category 3: The Secretary is waiving or modifying the following provisions of title IV of the HEA and the Department's regulations for affected individuals who are serving on active duty or performing qualifying National Guard duty during a war or other military operation or national emergency.

Institutional Charges and Refunds

The HEROES Act encourages institutions to provide a full refund of tuition, fees, and other institutional charges for the portion of a period of instruction that a student was unable to complete, or for which the student did not receive academic credit, because he or she was called up for active duty or for qualifying National Guard duty during a war or other military operation or national emergency. Alternatively, the Secretary encourages institutions to provide a credit in a comparable amount against future charges.

The HEROES Act also recommends that institutions consider providing easy and flexible reenrollment options to students who are affected individuals in this category. At a minimum, an institution must comply with the requirements of 34 CFR 668.18, which addresses the readmission requirements for service members serving for a period of more than 30 consecutive days under certain conditions. Some institutions must also abide by the protections provided by the Principles of Excellence (Executive Order 13607, issued April 27, 2012) to service members who are absent for shorter periods of service. Institutions agree to comply with the Principles of Excellence through arrangements with the Department of Defense and the Department of Veterans Affairs. Executive Order 13607 is available at *www.whitehouse.gov/the-press-office/2012/04/27/executive-order-establishing-principles-excellence-educational-instituti.*

Of course, an institution may provide such treatment to affected individuals other than those who are called up to active duty or for qualifying National Guard duty during a war or other military operation or national emergency.

Before an institution makes a refund of institutional charges, it must perform the required Return of Title IV Funds calculations based upon the originally assessed institutional charges. After determining the amount that the institution must return to the title IV Federal student aid programs, any reduction of institutional charges may take into account the funds that the institution is required to return. In other words, we do not expect that an institution would both return funds to the Federal programs and also provide a refund of those same funds to the student.

Category 4: The Secretary is waiving or modifying the following provisions of the HEA and the Department's regulations for dependents of affected individuals who are serving on active duty or performing qualifying National Guard duty during a war or other military operation or national emergency.

Verification Signature Requirements

The Department's regulations in 34 CFR 668.57(b), (c), and (d) require signatures to verify the number of family members in the household, the number of family members enrolled in postsecondary institutions, or other information specified in the annual **Federal Register** document that announces the FAFSA information that an institution and an applicant may be required to verify, as well as the acceptable documentation for verifying that FAFSA information. The Secretary is waiving the requirement for a parent's signature on any verification documentation required for title IV eligibility for a dependent student when no relevant parent can provide the required signature because of the parent's status as an affected individual in this category.

Required Signatures on the FAFSA, SAR, or in Connection With Submitting Corrections Electronically

Generally, when a dependent applicant for title IV aid submits the FAFSA or submits corrections to a previously submitted FAFSA, at least one parent's signature is required on the FAFSA, SAR, or in connection with submitting corrections electronically. The Secretary is waiving this requirement so that an applicant need not provide a parent's signature when there is no relevant parent who can provide the required signature because of the parent's status as an affected individual in this category. In these situations, a student's high school counselor or the FAA may sign on behalf of the parent as long as the applicant provides adequate documentation concerning the parent's inability to provide a signature due to the parent's status as an affected individual in this category.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.032 Federal PLUS Program; 84.033 Federal Work Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; and 84.268 William D. Ford Federal Direct Loan Program.)

Program Authority: 20 U.S.C. 1071, 1082, 1087a, 1087aa, Part F–1.

Kathleen A. Smith,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2017–20844 Filed 9–28–17; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2016–0413; FRL–9968–63–Region 2]

Approval and Promulgation of Implementation Plans; New Jersey; Regional Haze Five-Year Progress Report State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving New Jersey's regional haze progress report, submitted on June 28, 2016, as a revision to its State Implementation Plan (SIP). New Jersey's SIP revision addresses requirements of the Clean Air Act and the EPA's rules that require each state to submit periodic reports describing progress towards reasonable progress goals established for regional haze and a determination of the adequacy of the state's existing regional haze SIP. The EPA is approving New Jersey's determination that the State's regional haze SIP is adequate to meet these reasonable progress goals for the first implementation period which extends through 2018.

DATES: This rule is effective on October 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2016–0413. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* 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 through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–3381 or *wieber.kirk@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the Regional Haze Rule,[1] each state was required to submit its first implementation plan addressing regional haze visibility impairment to the EPA no later than December 17, 2007. *See* 40 CFR 51.308(b). New Jersey submitted its regional haze plan on July 28, 2009. On January 3, 2012, the EPA approved New Jersey's regional haze SIP submittal addressing the requirements of the first implementation period for regional haze. 77 FR 19 (Jan.3, 2012).

Each state is also required to submit a progress report in the form of a SIP revision that evaluates progress towards the reasonable progress goals (RPGs) for each mandatory Class I Federal area within the state and for each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). Each state is also required to submit, at the same time as the progress report, a determination of the adequacy of its existing regional haze SIP. *See* 40 CFR 51.308(h). The progress report SIP was due five years after submittal of the initial regional haze SIP.

On June 28, 2016, New Jersey submitted to the EPA, as a revision to its SIP, a report on progress made towards the RPGs for Class I areas in the State and for Class I areas outside the State that are affected by emissions from sources within the State. In its progress report SIP, New Jersey concludes the elements and strategies relied on in its original regional haze SIP are sufficient to enable New Jersey and neighboring states to meet all established RPGs. In a notice of proposed rulemaking (NPRM) published on August 1, 2017 (82 FR 35734), the EPA proposed to approve New Jersey's progress report as satisfying the requirements of 40 CFR 51.308(g) and 51.308(h). No comments were received on the August 1, 2017 proposed rulemaking.

II. Final Action

EPA is finalizing approval of New Jersey's Regional Haze Progress Report SIP revision, submitted by New Jersey on June 28, 2016, as meeting the requirements of 40 CFR 51.308(g) and 51.308(h).

III. Statutory and Executive Order Reviews

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

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

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

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,

[1] 40 CFR part 51, subpart P.

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 28, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: September 19, 2017.

Catherine R. McCabe,

Acting Regional Administrator, Region 2.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart FF—New Jersey

■ 2. In § 52.1570(e), the table titled ''EPA APPROVED NEW JERSEY NONREGULATORY AND QUASI-REGULATORY PROVISIONS'' is amended by adding the entry ''Regional Haze Five-Year Progress Report'' at the end of the table to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW JERSEY NONREGULATORY AND QUASI–REGULATORY PROVISIONS

SIP element	Applicable geographic or nonattainment area	New Jersey submittal date	EPA approval date	Explanation
*	*	*	*	*
Regional Haze Five-Year Progress Report.	State-wide	June 28, 2016	September 29, 2017, [**Federal Register** page citation].	

[FR Doc. 2017–20821 Filed 9–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0362; FRL–9968–10–Region 4]

Air Plan Approval; North Carolina Miscellaneous Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving several changes to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina, through the North Carolina Department of Environmental Quality (NCDEQ), on December 14, 2004, and March 1, 2016. The March 1, 2016, submission adds a new rule to the ''Exclusionary Rules'' of the North Carolina SIP, and the portion of the December 14, 2004, submission EPA is approving adds two new rules under a new section called ''Permit Exemptions.'' This action is being taken pursuant to the Clean Air Act (CAA or Act).

DATES: This rule will be effective October 30, 2017.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2016–0362. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 2004, and March 1, 2016, the State of North Carolina, through NCDEQ, submitted revisions to the North Carolina SIP. The March 1, 2016, submission which adds a new rule—15A NCAC 02Q .0809 *Concrete Batch Plants*—and a portion of the December 14, 2004, submission which adds two new rules—15A NCAC 02Q .0901, *Purpose and Scope* and .0902 *Portable Crushers.* In a proposed rulemaking published on July 10, 2017 (82 FR 31739), EPA proposed to approve these SIP revisions. The details of North Carolina's SIP revision and the rationale for EPA's action are explained in the proposed rulemaking. Comments on the proposed rulemaking were due on or before August 9, 2017. EPA did not receive any comments on the proposed action.

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of North Carolina Rules 15A NCAC 02Q .0809 entitled ''*Concrete Batch Plants*'' effective April 1, 2004, a new exclusionary rule for concrete batch that excludes from Title V permitting requirements such

facilities that operate below a specified annual production rate; 15A NCAC 02Q .0901 entitled ''*Purpose and Scope*'' effective January 1, 2005, a new exclusionary rule which provides for exclusions from construction and operating permits for certain types of sources and activities; and 15A NCAC 02Q .0902 entitled ''*Portable Crushers*'' effective January 1, 2005, an exclusionary rule which provides for exclusions from construction and operating permits for portable crusher operations.

Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally-enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 4 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

III. Final Action

EPA is approving North Carolina's March 1, 2016, submission and a portion of the December 14, 2004, submission. The changes pertain to the addition of two new rules under a new section ''Permit Exemptions'' and a new rule to the ''Exclusionary Rules'' of the North Carolina SIP. These rule adoptions do not contravene federal permitting requirements or existing EPA policy, nor will they impact the NAAQS or interfere with any other applicable requirement of the Act. *See* 42 U.S.C. 7410(l).

IV. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: September 13, 2017.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart II—North Carolina

■ 2. In § 52.1770, table 1 in paragraph (c) is amended under the heading ''Subchapter 2Q Air Quality Permits'' by:

■ a. Adding ''Sect .0809'' in numerical order.

■ b. Adding the heading ''Section .0900 Permit Exemptions'' and the entries ''Sect .0901'' and ''Sect .0902'' at the end of the table.

The additions read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

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

TABLE 1—EPA-APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Subchapter 2Q Air Quality Permits				
*	*	*	*	*
Section .0800 Exclusionary Rules				
*	*	*	*	*
Sect .0809	Concrete Batch Plants	4/1/2004	9/27/2017, [insert **Federal Register** citation].	
*	*	*	*	*
Section .0900 Permit Exemptions				
Sect .0901	Purpose and Scope	1/1/2005	9/27/2017, [insert **Federal Register** citation].	
Sect .0902	Portable Crushers	1/1/2005	9/27/2017, [insert **Federal Register** citation].	

* * * * *

[FR Doc. 2017–20325 Filed 9–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0398; FRL–9968–5–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the State of Maryland's state implementation plan (SIP). The revision is in response to EPA's February 3, 2017 Findings of Failure to Submit for various requirements relating to the 2008 8-hour ozone national ambient air quality standards (NAAQS). This SIP revision is specific to nonattainment new source review (NNSR) requirements. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on November 28, 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–2017–0398 at *https://www.regulations.gov,* or via email to *aquino.marcos@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mrs. Amy Johansen, (215) 814–2156, or by email at *johansen.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 8, 2017, the Maryland Department of the Environment (MDE) submitted on behalf of the State of Maryland a formal revision, requesting EPA's approval for the SIP of its NNSR Certification for the 2008 Ozone Standard (Revision 17–01). The SIP revision is in response to EPA's final 2008 8-hour ozone NAAQS Findings of Failure to Submit for NNSR requirements. *See* 82 FR 9158 (February 3, 2017). Specifically, Maryland is certifying that its existing NNSR program, covering the Baltimore Nonattainment Area (which includes Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties and the city of Baltimore), the Philadelphia-Wilmington-Atlantic City Nonattainment Area (which includes Cecil County in Maryland), and the Washington, DC Nonattainment Area (which includes Calvert, Charles, Frederick, Montgomery, and Prince Georges Counties in Maryland) for the 2008 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165, as amended by the final rule titled ''Implementation of the 2008 National Ambient Air Quality Standards

for Ozone: State Implementation Plan Requirements'' (SIP Requirements Rule), for ozone and its precursors.[1] *See* 80 FR 12264 (March 6, 2015).

A. 2008 8-Hour Ozone NAAQS

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR 50.15, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Philadelphia-Wilmington-Atlantic City Area and the Washington, DC Area were classified as marginal nonattainment areas, and the Baltimore Area was classified as a moderate nonattainment for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008–2010 ambient air quality data. *See* 77 FR 30088. On March 6, 2015, EPA issued the final SIP Requirements Rule, which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS. *See* 80 FR 12264. Areas that were designated as marginal ozone nonattainment areas were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012–2014 monitoring data. *See* 40 CFR 51.1103. The Philadelphia-Wilmington-Atlantic City Area and the Washington, DC Area did not attain the 2008 8-hour ozone NAAQS by July 20, 2015; however, these areas did meet the CAA section 181(a)(5) criteria, as interpreted in 40 CFR 51.1107, for a 1-year attainment date extension. *See* 81 FR 26697 (May 4, 2016). Therefore, on April 11, 2016, the EPA Administrator signed a final rule extending the Philadelphia-Wilmington-Atlantic City Area and the Washington, DC Area 2008 8-hour ozone NAAQS attainment date from July 20, 2015 to July 20, 2016.[2]

Moderate areas, such as the Baltimore Area, are required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2018, six years after the effective date of the initial nonattainment designations.[3] *See* 40 CFR 51.1103. The statutorily required DOA, for the Baltimore Area, which is due prior to the attainment date for the Area, has not passed and will be addressed in a future rulemaking action.

Based on initial nonattainment designations for the 2008 8-hour ozone standard, as well as the March 6, 2015 final SIP Requirements Rule, Maryland was required to develop a SIP revision addressing certain CAA requirements for the Philadelphia-Wilmington-Atlantic City, Washington, DC, and Baltimore Areas, and submit to EPA a NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2008 8-hour ozone NAAQS (*i.e.,* July 20, 2015). *See* 80 FR 12264 (March 6, 2015). EPA is taking action on Maryland's May 8, 2017 NNSR Certification SIP revision. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS is provided in Section II below.

B. 2017 Findings of Failure To Submit SIP for the 2008 8-Hour Ozone NAAQS

Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning requirements of CAA section 182.[4] States in the ozone transport region (OTR), such as Maryland, are additionally subject to the requirements outlined in CAA section 184.

Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For a marginal area, such as the Philadelphia-Wilmington-Atlantic City Area and the Washington, DC Area, a state is required to submit a baseline emissions inventory, adopt a SIP requiring emissions statements from stationary sources, and implement a NNSR program for the relevant ozone standard. *See* CAA section 182(a). For a moderate area, such as the Baltimore Area, a state needs to comply with the marginal area requirements, plus additional requirements, including the requirement to submit a demonstration that the area will attain in 6 years, the requirement to adopt and implement certain emissions controls, such as reasonably available control technology (RACT), and the requirement for greater emissions offsets for new or modified major stationary sources under the state's NNSR program. For each higher ozone nonattainment classification, a state needs to comply with all lower area classification requirements, plus additional emissions controls and more expansive NNSR offset requirements.

The CAA sets out specific requirements for states in the OTR.[5] Upon promulgation of the 2008 8-hour ozone NAAQS, states in the OTR were required to submit a SIP revision for RACT. *See* 40 CFR 51.1116. This requirement is the only recurring obligation for an OTR state upon revision of a NAAQS, unless that state also contains some portion of a nonattainment area for the revised NAAQS. In that case, the nonattainment requirements described previously also apply to those portions of that state.

In the March 6, 2015 SIP Requirements Rule, EPA detailed the

[1] The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

[2] EPA proposed approval of a Determination of Attainment (DOA) for the 2008 8-hour ozone NAAQS for the Philadelphia-Wilmington-Atlantic City Area and the Washington, DC Area on April 18, 2017 and April 25, 2017, respectively. These proposed actions were based on complete, certified, and quality assured ambient air quality monitoring data for the 2013–2015 monitoring period. *See* 82 FR 18268 (April 18, 2017) and 82 FR 19011 (April 25, 2017). It should be noted that a DOA does not alleviate the need for Maryland to certify that their existing SIP approved NNSR program is as stringent as the requirements at 40 CFR 51.165, as NNSR applies in nonattainment areas until an area has been redesignated to attainment. EPA expects to finalize the April 18, 2017 and April 25, 2017 DOAs in future rulemaking actions.

[3] On June 1, 2015, EPA finalized a clean data determination (CDD) for the Baltimore Area. This determination was based upon complete, quality-assured, and certified ambient air quality monitoring data that shows the Baltimore Area has monitored attainment of the 2008 8-hour ozone NAAQS for the 2012–2014 monitoring period. As a result of this determination, the requirement for the Baltimore Area to submit an attainment demonstration and associated reasonably available control measures (RACM), reasonable further progress plans (RFP), contingency measures, and other SIP revisions related to attainment of the standard are suspended for as long as the area continues to attain the 2008 8-hour ozone standard. *See* 80 FR 30941 (June 2, 2015). This action did not alleviate the need for Maryland to submit a NNSR Certification SIP revision, which is the subject of this rulemaking action.

[4] Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's ''design value,'' which represents air quality in the area for the most recent 3 years). The possible classifications for ozone nonattainment areas are Marginal, Moderate, Serious, Severe, and Extreme. *See* CAA section 181(a)(1).

[5] CAA section 184 details specific requirements for a group of states (and the District of Columbia) that make up the OTR. States in the OTR are required to submit RACT SIP revisions and mandate a certain level of emissions control for the pollutants that form ozone, even if the areas in the state meet the ozone standards.

requirements applicable to ozone nonattainment areas, as well as requirements that apply in the OTR, and provided specific deadlines for SIP submittals.

On February 3, 2017, EPA found that 15 states and the District of Columbia failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 8-hour ozone NAAQS that apply to nonattainment areas and/or states in the OTR. *See* 82 FR 9158. As explained in that rulemaking action, consistent with the CAA and EPA regulations, these findings of failure to submit established certain deadlines for the imposition of sanctions, if a state does not submit a timely SIP revision addressing the requirements for which the finding is being made, and for the EPA to promulgate a federal implementation plan (FIP) to address any outstanding SIP requirements.

EPA found that the State of Maryland failed to submit SIP revisions in a timely matter to satisfy NNSR requirements for its marginal and moderate nonattainment areas, specifically the Philadelphia-Wilmington-Atlantic City Area, the Washington, DC Area, and the Baltimore Area.[6] Maryland submitted its May 8, 2017 SIP revision to address the specific NNSR requirements for the 2008 8-hour ozone NAAQS, located in 40 CFR 51.160–165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS and the Findings of Failure to Submit is provided in Section II below.

II. Summary of SIP Revision and EPA Analysis

This rulemaking action is specific to Maryland's NNSR requirements. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area.[7] The specific NNSR requirements for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.160–165. The SIP Requirements Rule explained that, for each nonattainment area, a NNSR plan or plan revision was due no later than 36 months after the effective date of area designations for the 2008 8-hour ozone standard (*i.e.,* July 20, 2015).[8]

The minimum SIP requirements for NNSR permitting programs for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.165. *See* 40 CFR 51.1114. These NNSR program requirements include those promulgated in the ''Phase 2 Rule'' implementing the 1997 8-hour ozone NAAQS (75 FR 71018 (November 29, 2005)) and the SIP Requirements Rule implementing the 2008 8-hour ozone NAAQS. Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: Set major source thresholds for oxides of nitrogen (NO_X) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2); classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NO_X as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOC and NO_X as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)–(C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1)–(2); provide that the requirements applicable to VOC also apply to NO_X pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NO_X pursuant to 40 CFR 51.165(a)(9)(i)–(iii) (renumbered as (a)(9)(ii)–(iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS). Under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105. *See* 40 CFR 51.165(a)(12).

Maryland's longstanding SIP approved NNSR program, established in Code of Maryland Regulations (COMAR) Air Quality Rule COMAR 26.11.17—*Nonattainment Provisions for Major New Sources and Major Modifications,* applies to the construction and modification of major stationary sources in nonattainment areas. In its May 8, 2017 SIP revision, Maryland certifies that the version of the Air Quality Rule COMAR 26.11.17 in the SIP is at least as stringent as the federal NNSR requirements for the Philadelphia-Wilmington-Atlantic City Area, the Washington, DC Area, and the Baltimore Area. EPA last approved revisions to the SIP approved version of Maryland's NNSR rule in 2012 addressing, among other things, NSR Reform and NO_X as a precursor to ozone. *See* 77 FR 45949 (August 2, 2012).[9]

EPA notes that neither COMAR 26.11.17 nor Maryland's approved SIP have the regulatory provision for any emissions change of VOC in extreme nonattainment areas, specified in 40 CFR 51165(a)(1)(v)(F), because Maryland has never had an area designated extreme nonattainment for any of the ozone NAAQS. Thus, the Maryland SIP is not required to have this requirement for VOC in extreme nonattainment areas until such time as Maryland has an extreme ozone nonattainment area. Additionally, there are no anti-backsliding provisions found in 40 CFR 51.165(a)(12) in either COMAR 26.11.17 or the Maryland SIP because Maryland's major stationary source thresholds were established for the 1997 8-hour ozone NAAQS nonattainment designations, which were and continue to be more stringent. Thus, antibacksliding requirements are not required. Maryland has not changed these major stationary source threshold provisions in COMAR 26.11.17.01(17), so they remain in Maryland's federally-approved SIP.[10] All of the sources located in the 2008 8-hour ozone nonattainment areas in Maryland are required to meet a major stationary source threshold of 25 tons or more per year of VOC or NO_X.

The version of COMAR 26.11.17 that is contained in the current SIP has not changed since the 2012 rulemaking where EPA last approved Maryland's NNSR provisions. This version of the rule covers the Philadelphia-Wilmington-Atlantic City, Washington, DC, and Baltimore Nonattainment Areas

[6] The EPA found that the State of Maryland also failed to submit SIP revisions for inspection and maintenance (I/M) basic and nitrogen oxide RACT for major sources. These SIP requirements will be addressed in separate rulemaking actions and will not be discussed here. *See* 82 FR 9158 (February 3, 2017).

[7] *See* CAA sections 172(c)(5), 173 and 182.

[8] With respect to states with nonattainment areas subject to a finding of failure to submit NNSR SIP revisions, such revisions would no longer be required if the area were redesignated to attainment. The CAA's prevention of significant deterioration (PSD) program requirements apply in lieu of NNSR after an area is redesignated to attainment. For areas outside the OTR, NNSR requirements do not apply in areas designated as attainment.

[9] On August 30, 2012, EPA published a rulemaking correcting minor errors in their August 2, 2012 final rule. The correction of these errors did not change EPA's final action to approve the Maryland regulations. *See* 77 FR 52605.

[10] Under the 1997 8-hour ozone NAAQS, the Baltimore Area was classified as serious nonattainment and the Philadelphia-Wilmington-Atlantic City and Washington, DC Areas were classified as moderate nonattainment.

and remains adequate to meet all applicable NNSR requirements for the 2008 8-hour ozone NAAQS in 40 CFR 51.165, the Phase 2 Rule and the SIP Requirements Rule. A detailed description of the state submittal and EPA's evaluation is included in a technical support document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document or is also available electronically within the Docket for this rulemaking action.

III. Final Action

EPA is approving Maryland's May 8, 2017 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Philadelphia-Wilmington-Atlantic City, Washington, DC, and Baltimore Areas. EPA has concluded that the State's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under EPA's February 3, 2017 Findings of Failure to Submit. 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 28, 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.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action approving Maryland's 2008 8-hour ozone NAAQS Certification SIP revision for NNSR may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 14, 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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry ''2008 8-Hour Ozone NAAQS Nonattainment New Source Review

Requirements'' at the end of the table to read as follows:

§ 52.1070 Identification of plan.

(e) * * *

* * * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	* *	*
2008 8-Hour Ozone NAAQS Nonattainment New Source Review Requirements.	The Baltimore Area (includes Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties and the city of Baltimore), the Philadelphia-Wilmington-Atlantic City Area (includes Cecil County in Maryland), and the Washington, DC Area (includes Calvert, Charles, Frederick, Montgomery, and Prince Georges Counties in Maryland).	5/8/17	9/29/17 [insert **Federal Register** citation].	

[FR Doc. 2017–20834 Filed 9–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2017–0517; FRL–9968–66–Region 7]

Approval of Iowa Air Quality Implementation Plans; Elements of the Infrastructure SIP Requirements for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve elements of a State Implementation Plan (SIP) submission, for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). Infrastructure SIPs address the applicable requirements of Clean Air Act (CAA) section 110, which requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by the EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This direct final rule is effective November 28, 2017, without further notice, unless EPA receives adverse comment by October 30, 2017. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2017–0517, to *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219 at (913) 551–7039, or by email at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?

EPA is approving elements of the 2012 $PM_{2.5}$ NAAQS infrastructure SIP submission from the State of Iowa, dated December 15, 2015, and received on December 22, 2015. Specifically, EPA is approving the following elements of section 110(a)(2): (A), (B), (C), (D)(i)(II)—prevent significant deterioration of air quality (prong 3), (D)(ii) (E) through (H), and (J) through (M).

A Technical Support Document (TSD) is included as part of the docket to discuss the details of this action, including analysis of how the SIP meets the applicable 110 requirements for infrastructure SIPs.

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The state held a 30-day comment period, and a public hearing on November 16, 2015. No oral or written comments were received. This submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is approving elements of the December 15, 2015, infrastructure SIP submission from the State of Iowa, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2012 $PM_{2.5}$ NAAQS. As stated above, EPA is approving the following elements of section 110(a)(2): (A), (B), (C), (D), (D)(i)(II)—prevent significant deterioration of air quality (prong 3), (D)(ii), (E) through (H), and (J) through (M). Details of the submission are addressed in a TSD as part of the docket to discuss this approval action.

EPA is not taking action on section 110(a)(2)(I). Section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas. EPA does not expect infrastructure SIP submissions to address element (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. EPA will take action on part D attainment plan SIP submissions through a separate rulemaking governed by the requirements for nonattainment areas, as described in part D.

EPA is not taking action on section 110(a)(2)(D)(i)(I) prongs 1 and 2, and section 110(a)(2)(D)(i)(II) prong 4.

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of this issue of the **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision 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. 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. We will address all public comments in any subsequent final rule based on the proposed rule.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 20, 2017.

Cathy Stepp,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart Q Iowa

■ 2. Amend § 52.820(e) by adding an entry for ''(49) Sections 110(a)(1) and (2) Infrastructure Requirements 2012 annual $PM_{2.5}$ NAAQS'' in numerical order at the end of the table to read as follows:

§ 52.820 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IOWA NONREGULATORY SIP PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	* * *
(49) Sections 110(a)(1) and (2) Infrastructure Requirements 2012 annual $PM_{2.5}$ NAAQS.	Statewide	12/15/15	09/29/17 and [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) prong 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). 110(a)(2)(I) is not applicable. [EPA–R07–OAR–2017–0517; FRL–XXXX–Region 7.]

[FR Doc. 2017–20829 Filed 9–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2016–0598; FRL–9968–46–OAR]

RIN 2060–AT16

Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing withdrawal of the federal implementation plan (FIP) provisions that require affected electricity generating units (EGUs) in Texas to participate in Phase 2 of the Cross-State Air Pollution Rule (CSAPR) trading programs for annual emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X). Withdrawal of the FIP requirements is intended to address a decision of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanding the CSAPR Phase 2 SO_2 budget for Texas to the EPA for reconsideration. With this action, the EPA is also determining that, following withdrawal of the FIP requirements, sources in Texas do not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with regard to the 1997 national ambient air quality standard (NAAQS) for fine particulate matter ($PM_{2.5}$). Accordingly, we are also determining that the EPA has no obligation to issue new FIP requirements for Texas sources to address transported $PM_{2.5}$ pollution under Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) with regard to that NAAQS. Finally, the EPA is also affirming the continued validity of the Agency's 2012 determination that participation in CSAPR meets the Regional Haze Rule's criteria for an alternative to the application of source-specific best available retrofit technology (BART). The EPA has determined that changes to CSAPR's geographic scope resulting from the actions EPA has taken or expects to take in response to the D.C. Circuit's remand do not affect the continued validity of participation in CSAPR as a BART alternative, because the changes in geographic scope would not have adversely affected the results of the air quality modeling analysis upon which the EPA based the 2012 determination.

DATES: This final rule is effective on September 29, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0598. All documents in the docket are listed and publicly available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Questions about the withdrawal of CSAPR FIP requirements for Texas EGUs should be directed to David Lifland, Clean Air Markets Division, Office of Atmospheric Programs, U.S. Environmental Protection Agency, MC 6204M, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 343–9151; email address: *lifland.david@epa.gov.* Questions about the sensitivity analysis regarding CSAPR participation as a BART alternative should be directed to Melinda Beaver, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, Mail Code C539–04, Research Triangle Park, NC 27709; telephone number: (919) 541–1062; email address: *beaver.melinda@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities regulated under CSAPR are fossil fuel-fired boilers and stationary combustion turbines that serve generators producing electricity for sale, including combined cycle units and units operating as part of systems that cogenerate electricity and other useful energy output. Regulated categories and entities include:

Category	NAICS * code	Examples of potentially regulated industries
Industry	221112	Fossil fuel-fired electric power generation.

* 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 regulated. To determine whether your facility is affected by this action, you should carefully examine the applicability provisions in 40 CFR 97.404 and 97.704. If you have questions regarding the applicability of CSAPR to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Table of Contents

I. Overview

The EPA promulgated CSAPR in 2011 in order to address the obligations of states—and of the EPA when states have not met their obligations—under CAA section 110(a)(2)(D)(i)(I) to prohibit air pollution contributing significantly to nonattainment in, or interfering with maintenance by, any other state with regard to several NAAQS, including the 1997 annual $PM_{2.5}$ NAAQS.[1] To address Texas' transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to this NAAQS, CSAPR established FIP requirements for affected EGUs in Texas, including statewide emissions budgets that apply to the EGUs' collective annual emissions of SO_2 and NO_X.

In 2012, the EPA promulgated an amendment to the Regional Haze Rule allowing a state whose EGUs participate in one of the CSAPR trading programs for a given pollutant to rely on its sources' participation in CSAPR as an alternative to source-specific BART requirements—the so-called CSAPR-better-than-BART rule, codified at 40 CFR 51.308(e)(4).[2] This rule relied on a regional analytic demonstration that included an air quality modeling analysis comparing the projected visibility impacts of CSAPR implementation and BART implementation. To project emissions under CSAPR, the EPA assumed that the geographic scope and state emissions budgets for CSAPR would be implemented as finalized and amended in 2011 and 2012.[3]

In July 2015, the D.C. Circuit issued a decision on a range of challenges to CSAPR in *EME Homer City Generation, L.P.* v. *EPA (EME Homer City II),* denying most claims but remanding several CSAPR emissions budgets to the EPA for reconsideration, including the Phase 2 SO_2 budget for Texas.[4] Because the remand created the potential for changes in the geographic scope and stringency of CSAPR as evaluated for purposes of the 2012 comparison to BART implementation, the EPA recognizes that how the Agency addresses the remand could raise questions as to whether states and the EPA should continue to rely on the CSAPR-better-than-BART rule.

The EPA issued a proposal to address the remand of the Texas Phase 2 SO_2 budget and to resolve any questions about continued reliance on the CSAPR-better-than-BART rule on November 3, 2016, and solicited comment on the proposal.[5] Four commenters provided substantive comments, and this final rule takes those comments into consideration. The Agency's responses to the principal comments are provided below. The remaining comments are addressed in the Response to Comments document available in the docket for this action.

In this final action, as proposed, the EPA is withdrawing the FIP provisions requiring Texas EGUs to participate in the CSAPR SO_2 Group 2 Trading Program and the CSAPR NO_X Annual Trading Program during Phase 2 of these programs, which began with 2017 emissions.[6] Removal of Texas EGUs from Phase 2 of these CSAPR trading programs renders it necessary to evaluate whether EPA should use other means to address any remaining transport obligation for Texas under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual $PM_{2.5}$ NAAQS. However, the EPA is finalizing its proposed determination that Texas does not have any such remaining 1997 annual $PM_{2.5}$ NAAQS transport obligation as of the beginning of Phase 2 of the CSAPR trading programs for SO_2 and annual NO_X. Accordingly, the EPA is also determining that the Agency has no obligation to issue new FIP requirements for Texas sources to address transported $PM_{2.5}$ pollution under CAA section 110(a)(2)(D)(i)(I) with regard to this NAAQS.

Also in this action, the EPA is concluding, based on consideration of the sensitivity analysis included in the proposal and additional analysis included in this final action, that the 2012 analytic demonstration supporting the conclusion that CSAPR participation qualifies as a BART alternative is not adversely affected by the actions being taken to respond to the D.C. Circuit's remand of CSAPR Phase 2 budgets.[7] As a result, no revisions are needed to the CSAPR-better-than-BART rule.

At the same time, however, because Texas EGUs will no longer participate in a CSAPR SO_2 trading program, Texas

[1] Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011).

[2] Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans, 77 FR 33642 (June 7, 2012).

[3] CSAPR was amended three times in 2011 and 2012 to add five states to the seasonal NO_X program and to increase certain state budgets. 76 FR 80760 (December 27, 2011); 77 FR 10324 (February 21, 2012); 77 FR 34830 (June 12, 2012). The CSAPR-better-than-BART final rule reflected consideration of these changes to CSAPR.

[4] *EME Homer City Generation, L.P.* v. *EPA (EME Homer City II),* 795 F.3d 118, 138 (D.C. Cir. 2015). The court also remanded the Phase 2 SO_2 budgets for three other states and the Phase 2 seasonal NO_X budgets for eleven states, including Texas. *Id.*

[5] Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas, Proposed Rule, 81 FR 78954 (November 10, 2016).

[6] With regard to each of the other remanded budgets, the EPA either has already withdrawn or expects to withdraw the FIP provisions requiring the EGUs in the affected states to participate in the corresponding CSAPR federal trading programs in Phase 2 through other actions, as discussed in section III below.

[7] In addition to this action, the full set of actions being taken to respond to the remand includes the 2016 CSAPR Update withdrawing the remanded seasonal NO_X budgets for eleven states and establishing new seasonal NO_X budgets to address a more recent ozone NAAQS for eight of those states, the action approving Alabama's SIP revision establishing state CSAPR trading programs for SO_2 and annual NO_X to replace the corresponding federal CSAPR trading programs, and the expected actions to approve proposed SIP revisions for Georgia and South Carolina comparable to Alabama's SIP revision (see notes 14, 53, and 57 below). These additional actions are described in more detail in sections II.A and III.D below.

will no longer be eligible to rely on CSAPR participation as an alternative to the application of source-specific SO_2 BART for its BART-eligible EGUs under 40 CFR 51.308(e)(4). That obligation and any other remaining regional haze obligations for Texas are not addressed in this action and will need to be addressed through other actions as appropriate.[8]

This final rule is effective immediately upon publication in the **Federal Register.** As discussed in section VI.L below, the EPA is issuing this rule under CAA section 307(d). While Administrative Procedure Act (APA) section 553(d)[9] generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register,** CAA section 307(d)(1) clarifies that ''[t]he provisions of [APA] section 553 . . . shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' Thus, APA section 553(d) does not apply to this rule. Nevertheless, in making this rule effective immediately upon publication, the EPA has considered the purposes underlying APA section 553(d). The primary purpose of the prescribed 30-day waiting period is to give affected parties a reasonable time to adjust their behavior and prepare before a final rule takes effect. This rule does not impose any new regulatory requirements and therefore does not necessitate time for affected sources to adjust their behavior or otherwise prepare for implementation. Further, APA section 553(d) expressly allows an effective date less than 30 days after publication for a rule that ''grants or recognizes an exemption or relieves a restriction.'' This rule relieves Texas EGUs of certain FIP requirements that would otherwise apply. Consequently, making this rule effective immediately upon publication is consistent with the purposes of APA section 553(d).

II. Background

A. History and Summary of CSAPR

The EPA initially promulgated CSAPR in 2011 to address the obligations of states—and of the EPA when states have not met their obligations—under CAA section 110(a)(2)(D)(i)(I), often referred to as the ''good neighbor'' provision, to prohibit transported air pollution contributing significantly to nonattainment in, or interfering with maintenance by, any other state with regard to the 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 1997 8-hour ozone NAAQS.[10] To reduce transported $PM_{2.5}$ pollution, CSAPR sets limits on annual emissions of NO_X and SO_2 as precursors to $PM_{2.5}$. To reduce transported ozone pollution during the May-September ozone season, CSAPR sets limits on seasonal emissions of NO_X as a precursor to ozone. The CSAPR requirements were initially established in FIPs, but states can voluntarily replace the CSAPR FIPs with CSAPR state implementation plans (SIPs) that include equally stringent budgets.[11] Upon approval of such a CSAPR SIP, the corresponding CSAPR FIP is automatically withdrawn.[12]

As explained in the proposal, a number of petitioners challenged CSAPR, and in 2015 the D.C. Circuit issued a decision remanding the Phase 2 SO_2 emissions budgets for Alabama, Georgia, South Carolina, and Texas and the Phase 2 seasonal NO_X budgets for eleven states to the EPA for reconsideration.[13] In response to the remand of the Phase 2 SO_2 emissions budgets, the EPA has engaged the affected states to determine appropriate next steps to address the decision with regard to each state. As discussed in the proposal and also in section III below, the EPA expects that EGUs in Alabama, Georgia, and South Carolina will continue to participate in CSAPR trading programs for SO_2 and annual NO_X pursuant to approved SIP revisions (with equally stringent emissions budgets), making Texas the only state whose EGUs will no longer participate in these programs to reduce transported $PM_{2.5}$ pollution as a result of actions taken to address the remand.

Also as explained in the proposal, in the CSAPR Update rule issued in 2016, the EPA responded to the remand of eleven states' original Phase 2 seasonal NO_X budgets (which had been established to address transport obligations with regard to the 1997 8-hour ozone NAAQS) by withdrawing the FIP provisions requiring EGUs to comply with those budgets for emissions after 2016.[14] The EPA determined that none of those eleven states has a remaining transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 8-hour ozone NAAQS, but for eight of those states, including Texas, the CSAPR Update rule also established new budgets to address transport obligations with regard to the more stringent 2008 8-hour ozone NAAQS.[15] EGUs in the three states with remanded Phase 2 seasonal NO_X budgets for which the EPA did not establish new budgets—Florida, North Carolina, and South Carolina—are no longer required to participate in a CSAPR trading program for seasonal NO_X emissions to address ozone transport obligations after 2016. However, because EGUs in North Carolina and South Carolina[16] are expected to continue to participate in a CSAPR trading program for annual NO_X emissions in order to address $PM_{2.5}$-related transport obligations, Florida is expected to be the only state originally covered by CSAPR for NO_X emissions for which all such coverage is ending as a result of the EPA's set of actions to address the remand.[17]

Prior to this action, Texas EGUs have been subject to CSAPR FIP provisions requiring participation in the CSAPR SO_2 Group 2 Trading Program and the CSAPR NO_X Annual Trading Program. With this action, the EPA is withdrawing the FIP provisions requiring Texas EGUs to participate in these CSAPR federal trading programs. (Although the court's decision specifically remanded only Texas' Phase 2 SO_2 budget, the court's rationale for remanding that budget also implicates Texas' Phase 2 annual NO_X budget because the SO_2 and annual NO_X budgets were developed through an integrated analysis and were promulgated to meet a common $PM_{2.5}$ transport obligation under CAA section 110(a)(2)(D)(i)(I).) This action has no effect on the separate CSAPR requirements applicable to Texas EGUs relating to seasonal NO_X emissions, which, as discussed in the preceding paragraph, were promulgated in the

[8] The EPA notes that under 40 CFR 51.308(e)(4), CSAPR implementation is available as a NO_X BART alternative for a state whose EGUs are subject to CSAPR requirements for either annual NO_X or seasonal NO_X emissions. *See* 77 FR at 33652. Texas EGUs continue to participate in a CSAPR trading program for seasonal NO_X. In a separate proposed action, the EPA has proposed to address NO_X BART for Texas EGUs through reliance on participation in CSAPR as a NO_X BART alternative. 82 FR 917 (January 4, 2017).

[9] 5 U.S.C. 553(d).

[10] *See generally* 76 FR 48208.

[11] *E.g.,* 40 CFR 52.39(i).

[12] *E.g.,* 40 CFR 52.39(j).

[13] *EME Homer City II,* 795 F.3d at 138.

[14] Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update), 81 FR 74504, 74576 (October 26, 2016).

[15] *Id.* at 74524.

[16] North Carolina EGUs remain subject to FIP provisions requiring participation in a CSAPR trading program for annual NO_X emissions. The EPA's expectation that South Carolina EGUs will continue to participate in a CSAPR program for annual NO_X emissions is based on South Carolina's submission of a SIP revision that includes such requirements, as discussed in sections III and V below.

[17] For discussion of the EPA's response to the remand of the Florida seasonal NO_X budget, and the assessment of the implications of that response for the CSAPR-better-than-BART analytical demonstration, *see* 81 FR at 78962.

CSAPR Update rule and are not subject to the D.C. Circuit's remand.

B. CSAPR Participation as a BART Alternative

The proposal provides a detailed explanation of the Regional Haze Rule requirements for best available retrofit technology (BART) and the criteria for demonstrating that an alternative measure achieves greater reasonable progress than source-specific BART.[18]

In 2012, the EPA amended the Regional Haze Rule to provide that participation by a state's EGUs in a CSAPR trading program for a given pollutant—either a CSAPR federal trading program implemented through a CSAPR FIP or a CSAPR state trading program implemented through an approved CSAPR SIP revision—qualifies as a BART alternative for those EGUs for that pollutant.[19] In promulgating this CSAPR-better-than-BART rule, the EPA relied on an analytic demonstration of the improvement in visibility from CSAPR implementation relative to BART implementation based on an air quality modeling study.[20] Since the EPA promulgated this amendment, numerous states covered by CSAPR have come to rely on the provision through either SIPs or FIPs.[21] Additionally, many states have submitted or are planning to submit SIPs relying on the CSAPR-better-than-BART rule for BART or visibility transport purposes, or to replace regional haze FIPs with SIPs.

As explained in the proposal, the 2012 analytic demonstration that CSAPR provides for greater reasonable progress than BART included Texas EGUs as subject to CSAPR for SO_2 and annual NO_X (as well as seasonal NO_X) and included Florida EGUs as subject to CSAPR for seasonal NO_X. The EPA recognizes that the treatment of these EGUs in the analysis would have been different if the Florida FIP withdrawal finalized in the CSAPR Update rule and the Texas FIP withdrawal finalized in this action had been known at the time of the demonstration. In order to address any potential concern about continuing to rely on CSAPR participation as a BART alternative for EGUs in the remaining CSAPR states, in the proposal for this action the EPA provided a sensitivity analysis explicitly addressing the potential effect on that demonstration of the removal of Texas and Florida EGUs from the relevant CSAPR trading programs in response to the D.C. Circuit's remand. As discussed in section IV, the sensitivity analysis indicates clearly that the demonstration remains valid despite these changes in CSAPR's geographic scope, supporting the continued validity of EPA's 2012 conclusion that CSAPR participation meets the Regional Haze Rule's criteria for a BART alternative.[22] Consequently, in this action the EPA is affirming the current Regional Haze Rule provision at 40 CFR 51.308(e)(4) authorizing the use of CSAPR participation as a BART alternative for BART-eligible EGUs for a given pollutant in states whose EGUs continue to participate in a CSAPR trading program for that pollutant.

III. Withdrawal of CSAPR FIP Requirements Related to Texas' Transport Obligations With Regard to the 1997 Annual $PM_{2.5}$ NAAQS

A. Summary

In this action, as proposed, the EPA is responding to the remand of the CSAPR Phase 2 SO_2 budget for Texas by withdrawing the FIP provisions requiring Texas EGUs to participate in the CSAPR SO_2 Group 2 Trading Program and the CSAPR NO_X Annual Trading Program with regard to emissions during Phase 2 of those programs, which began in 2017. In *EME Homer City II,* the court remanded the CSAPR Phase 2 SO_2 budget for Texas to the EPA for reconsideration on the grounds that the budget may be more stringent than necessary to address the state's obligation under CAA section 110(a)(2)(D)(i)(I) to reduce transported pollution with respect to the 1997 annual $PM_{2.5}$ NAAQS.[23] Upon review of options for responding to the remand, the EPA has determined, for the reasons discussed in this section, that withdrawal of the FIP provisions identified above, rather than issuance of revised FIP provisions for Texas with a higher (*i.e.,* less stringent) Phase 2 SO_2 budget as advocated by some commenters, is the appropriate response. Withdrawal of the FIP provisions related to the CSAPR SO_2 trading program encompasses withdrawal of the requirement for Texas EGUs to comply with the remanded Phase 2 SO_2 budget, thereby addressing the specific rule provision remanded by the court. The EPA is withdrawing the FIP provisions related to annual NO_X (in addition to the requirements related to SO_2) because the CSAPR FIP requirements for SO_2 and annual NO_X were determined through an integrated analysis and were promulgated in combination to remedy covered states' $PM_{2.5}$ transport obligations; the court's finding that CSAPR's Phase 2 requirements may be more stringent than necessary to address Texas' $PM_{2.5}$ transport obligation therefore implicates the state's Phase 2 budgets for both SO_2 and annual NO_X.

Withdrawal of the previous CSAPR FIP requirements revives the need to consider Texas' transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual $PM_{2.5}$ NAAQS and to address any remaining obligation through other means. However, as proposed, the Agency is further determining that Texas has no remaining transport obligation under this CAA provision with regard to this NAAQS following withdrawal of the previous FIP requirements, and consequently is also determining that the EPA has no obligation to issue new FIP requirements as to Texas's transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual $PM_{2.5}$ NAAQS.

In the CSAPR final rule, the EPA determined that 23 states, including Texas, had transport obligations with regard to the 1997 annual $PM_{2.5}$

[18] 81 FR at 78957.

[19] 40 CFR 51.308(e)(4); *see also generally* 77 FR 33642. Legal challenges to the CSAPR-better-than-BART rule from conservation groups and other petitioners are pending. *Utility Air Regulatory Group* v. *EPA,* No. 12–1342 (D.C. Cir. filed August 6, 2012).

[20] *See* Technical Support Document for Demonstration of the Transport Rule as a BART Alternative, Docket ID No. EPA–HQ–OAR–2011–0729–0014 (December 2011) (2011 CSAPR/BART Technical Support Document), and memo entitled ''Sensitivity Analysis Accounting for Increases in Texas and Georgia Transport Rule State Emissions Budgets,'' Docket ID No. EPA–HQ–OAR–2011–0729–0323 (May 29, 2012), both available in the docket for this action.

[21] The EPA has promulgated FIPs relying on CSAPR participation for BART purposes for Georgia, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, 77 FR at 33654, and Nebraska, 77 FR 40150, 40151 (July 6, 2012). The EPA has approved SIPs relying on CSAPR participation for BART purposes for Minnesota, 77 FR 34801, 34806 (June 12, 2012), and Wisconsin, 77 FR 46952, 46959 (August 7, 2012).

[22] With respect to each of the remanded budgets, the EPA has responded or expects to respond to the remand by withdrawing the FIP provisions requiring compliance with the remanded budget. Thus, all changes to CSAPR arising directly from the Agency's response to the remand are changes in CSAPR's geographic scope rather than changes in the stringency of state budgets. Although the EPA has also promulgated new CSAPR seasonal NO_X budgets for 22 states (including eight states with remanded seasonal NO_X budgets) in order to address a more stringent NAAQS, *see generally* 81 FR 74504, for purposes of the sensitivity analysis the EPA has conservatively not considered the generally increased stringency of the new seasonal NO_X budgets, but the EPA did consider the changes in CSAPR's geographic scope—that is, the fact that the remaining three states with remanded seasonal NO_X budgets will no longer participate in CSAPR for seasonal NO_X.

[23] 795 F.3d at 128–29. A more detailed discussion of how the EPA established the CSAPR Phase 2 SO_2 budget for Texas and why the court found the budget invalid is included in the proposal for this action. 81 FR at 78958.

NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, or both, and established SO_2 and annual NO_X emissions budgets for each of the states.[24] The budgets were implemented through FIP provisions requiring the affected EGUs in each covered state to participate in CSAPR allowance trading programs. In the case of Texas, the $PM_{2.5}$-related FIP requirements were imposed based solely on the state's transport obligations with regard to the 1997 annual $PM_{2.5}$ NAAQS.[25]

Following issuance of the D.C. Circuit's decision in *EME Homer City II* remanding the CSAPR Phase 2 SO_2 budget for Texas, the EPA reevaluated its earlier conclusions regarding Texas' $PM_{2.5}$ transport obligations by reexamining the data in the final CSAPR record in light of the D.C. Circuit's holdings in the decision, including the holdings regarding the CSAPR Phase 2 seasonal NO_X budgets for several states, as explained in the proposal.[26] The final CSAPR record contained ''base case'' modeling projections of air quality at monitoring locations throughout the country both for 2012, the intended start year of Phase 1 of the CSAPR trading programs, and for 2014, the intended start year of Phase 2 of the programs. The base case projections were designed to represent projected air quality at these monitoring locations without any emission reductions from CSAPR. In the CSAPR rulemaking, the EPA used the 2012 base case air quality projections for purposes of identifying ozone receptors projected to have air quality problems and determining states that were linked to those receptors and that therefore might have transport obligations under both Phase 1 and Phase 2 of the CSAPR trading programs. However, in *EME Homer City II,* the D.C. Circuit agreed with petitioners[27] that the EPA should also have considered the 2014 base case air quality projections for these purposes, and that in instances of receptors where the 2014 base case projections did not show air quality problems, the EPA lacked authority to require any emission reductions in Phase 2 of the CSAPR trading programs based on linkages to those receptors only occurring in Phase 1 of the programs. On these grounds, the court found that EPA lacked authority to establish Phase 2 seasonal NO_X emission limitations for EGUs in ten states linked solely to ozone receptors whose 2014 air quality projections did not show air quality problems.[28]

While not discussed in the court's decision, the projections of 2014 air quality for a $PM_{2.5}$ receptor in Madison County, Illinois (the only $PM_{2.5}$ receptor with projected air quality problems to which Texas was linked) in the final CSAPR record are analogous to the 2014 air quality projections for the ozone receptors described above, in that the air quality problems at the Madison County receptor were projected to be resolved in 2014 before any emission reductions from CSAPR. In light of the court's holding as to the legal import of the 2014 base case air quality projections for the ozone receptors described above, the EPA considered the legal import of the analogous 2014 base case air quality projections for the Madison County $PM_{2.5}$ receptor with respect to Texas' $PM_{2.5}$-related obligations under CSAPR. There are three relevant record data elements. First, the record indicates that the only $PM_{2.5}$ receptor to which Texas is linked for purposes of determining possible obligations under the good neighbor provision is the receptor in Madison County, Illinois.[29] Second, the projected maximum design value [30] for annual $PM_{2.5}$ at the Madison County receptor is 15.02 micrograms per cubic meter ($\mu g/m^3$) in the 2014 base case.[31] Finally, the value that the EPA used to determine whether a particular $PM_{2.5}$ receptor should be identified as having air quality problems that may trigger transport obligations with regard to the 1997 annual $PM_{2.5}$ NAAQS is 15.05 $\mu g/m^3$, which is higher than the Madison County maximum design value in the 2014 base case.[32] Thus, the reevaluation of the final CSAPR record in light of the D.C. Circuit's holding indicates that the record does not support a finding of a transport obligation for Texas under CAA section 110(a)(2)(D)(i)(I) with regard to this NAAQS as of the beginning of Phase 2 of the CSAPR trading programs for SO_2 and annual NO_X, and the Agency accordingly finds that the state's obligation is resolved without a need for further emission reductions, including the emission reductions from CSAPR. The finding that Texas's transport obligation with regard to this NAAQS is resolved as of the start of Phase 2 of the CSAPR trading programs without the need for any emission reductions from CSAPR removes the EPA's authority to issue new FIP requirements for purposes of responding to the court's remand of the state's CSAPR Phase 2 SO_2 budget. The finding likewise eliminates any obligation of the EPA to issue new FIP requirements addressing a remaining transport obligation of the state with regard to this NAAQS following withdrawal of the existing CSAPR FIP requirements, because the state has no such remaining transport obligation following the withdrawal.

As noted in the proposal, the modeling for the CSAPR final rule also linked Texas to a downwind air quality problem with regard to the 2006 24-hour $PM_{2.5}$ NAAQS, but the EPA did not rely on the linkage with regard to this NAAQS as a basis for establishing CSAPR FIP requirements for Texas EGUs. In the proposal, the EPA indicated that data in the final CSAPR record, reevaluated in light of *EME Homer City II,* would show that Texas no longer has a transport obligation with regard to the 2006 24-hour $PM_{2.5}$ NAAQS as of the beginning of Phase 2 of the CSAPR trading programs for SO_2 and annual NO_X, but that because Texas was not subject to CSAPR requirements with regard to this NAAQS, the EPA was not proposing to make a determination in this action as to any obligation of Texas with regard to this NAAQS. Nevertheless, because commenters raise the 2006 24-hour $PM_{2.5}$ NAAQS in their comments, the EPA will explain how the court's reasoning would apply with respect to

[24] The EPA also determined in CSAPR and a related supplemental rule that 25 states, including Texas, had transport obligations with regard to the 1997 8-hour ozone NAAQS. In all, 28 states were determined to have transport obligations related to either $PM_{2.5}$, ozone, or both. The EPA's process for determining states' emissions limitations under CSAPR and the associated CSAPR FIP requirements is described at length in the preamble to the CSAPR final rule. *See generally* 77 FR at 48222–71.

[25] As noted in the proposal and further discussed below, the modeling for the CSAPR final rule also linked Texas to a downwind air quality problem with regard to the 2006 24-hour $PM_{2.5}$ NAAQS, but the EPA did not rely on the linkage with regard to that NAAQS as a basis for establishing CSAPR FIP requirements for Texas EGUs. 81 FR at 78960 n.42; *see also* 76 FR at 48243, 48214.

[26] 81 FR at 78960.

[27] *See* Opening Brief of Industry and Labor Petitioners on Remand 8, 14, *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. filed December 10, 2014).

[28] *EME Homer City II,* 795 F.3d at 129–30. The court also remanded the Phase 2 seasonal NO_X budget for an eleventh state (Texas), but on different grounds.

[29] *See* 76 FR at 48241, tables V.D–2 and V.D–3.

[30] The EPA independently considered linkages to ''nonattainment'' and ''maintenance'' receptors. If both the projected average design value and the projected maximum design values for a receptor were above the triggering threshold, the receptor was considered a nonattainment receptor. If the projected maximum design value was above the triggering threshold but the projected average design value was not, the receptor was considered a maintenance receptor. Thus, if the projected maximum design value was not above the triggering threshold, the receptor was not considered either a nonattainment receptor or a maintenance receptor. *See* 76 FR at 48233.

[31] *See* projected 2014 base case maximum annual $PM_{2.5}$ design value for Madison County, Illinois receptor 171191007 at B–41 of the Air Quality Modeling Final Rule Technical Support Document, Docket ID No. EPA–HQ–OAR–2009–0491–4140 (June 2011) (CSAPR Final Rule Technical Support Document), available in the docket for this action.

[32] 76 FR at 48233.

the data for this NAAQS. The analysis for the 2006 24-hour $PM_{2.5}$ NAAQS is essentially identical to the analysis described above with regard to the 1997 annual $PM_{2.5}$ NAAQS. Specifically, the Madison County receptor is the only $PM_{2.5}$ receptor to which Texas was linked for this NAAQS; [33] the projected maximum design value for 24-hour $PM_{2.5}$ at the Madison County receptor is 35.3 μg/m^3 in the 2014 base case; [34] and the value that the EPA used to determine whether a particular $PM_{2.5}$ receptor should be identified as having air quality problems that may trigger transport obligations with regard to the 2006 24-hour $PM_{2.5}$ NAAQS is 35.5 μg/m^3, which is higher than the Madison County maximum design value in the 2014 base case.[35] Thus, the reevaluation of the final CSAPR record in light of the D.C. Circuit's holding also indicates that the record would not support a finding of a transport obligation for Texas with regard to the 2006 24-hour $PM_{2.5}$ NAAQS as of the beginning of Phase 2 of the CSAPR trading programs for SO_2 and annual NO_X.

Overall, on the subject of the proposed withdrawal of the FIP provisions and the proposed finding that Texas will no longer have a transport obligation following withdrawal of the FIP provisions, the EPA received substantive comments from two parties.[36] The remainder of this section summarizes these commenters' principal comments on this topic and provides the Agency's response.

B. Adequacy of Rationale for Finding No Remaining Transport Obligation

The commenters state that the Agency's explanation for the proposed finding that Texas no longer has a transport obligation under CAA section 110(a)(2)(D)(i)(I) with regard to the 1997 annual $PM_{2.5}$ NAAQS as of the beginning of Phase 2 of the CSAPR trading programs for SO_2 and annual NO_X is inadequate or confusing, and that the Agency must provide additional explanation for changing its position on the continued existence of a Texas transport obligation from the contrary position taken by the Agency when promulgating the CSAPR final rule.

The EPA disagrees with these comments. The proposal contained a complete explanation of the Agency's basis for this finding, including all necessary supporting data and documentation.[37] As fully explained in the proposal and reiterated above, the Agency's change in position as to Texas' transport obligation between the CSAPR final rule and this action is readily attributable to the D.C. Circuit's holding in *EME Homer City II* with regard to the legal import of the 2014 base case air quality projections in the final CSAPR record. The court's holding clarifies the legal standard the Agency should have used when considering the information in the final CSAPR record, which includes those air quality projections.

C. Responsiveness to the D.C. Circuit's Remand Instructions

The commenters assert that withdrawal of the remanded Texas SO_2 budget without issuance of a presumably less stringent replacement budget is not responsive to the D.C. Circuit's remand instructions. According to the commenters, the court directed the EPA to develop a revised CSAPR FIP SO_2 budget for Texas EGUs that does not over-control, and the EPA must either do so or, alternatively, must allow Texas to submit a CSAPR SIP with a higher SO_2 budget. The commenters' argument is intended to provide a continued basis for reliance on CSAPR participation as an SO_2 BART alternative for Texas EGUs. Underlying the commenters' arguments is an apparent belief that a revised, higher CSAPR budget, whether issued through a FIP or approved through a SIP, would automatically enable Texas to rely on CSAPR participation as an alternative to source-specific SO_2 BART requirements for the State's EGUs under 40 CFR 51.308(e)(4).

The EPA disagrees with these comments. As an initial matter, the D.C. Circuit in fact did not direct the Agency to develop replacement budgets for the Texas SO_2 budget or any of the other remanded CSAPR Phase 2 budgets. Rather, the court found that certain budgets were invalid and remanded to the EPA to ''reconsider'' them,[38] a general instruction that encompasses a range of possible Agency actions upon reconsideration. The commenters cite no statement from the court's opinion that requires the establishment of replacement budgets, but assert that such a requirement must be inferred from the court's other statements or determinations. For example, the commenters suggest that because the court remanded the budgets without vacatur instead of vacating the budgets outright, the court must have intended for the Agency to replace rather than simply withdraw the budgets. However, the court actually provided a different rationale for remanding without vacatur, including the statement that ''some good neighbor obligations *may* be appropriate for *some* of the relevant states.'' [39] The reference to ''some'' of the states indicates that the court considered it likely that replacement budgets would not be established in *every* instance, and the use of the word ''may'' indicates that the court considered it possible that replacement budgets would not be established in *any* instance. Thus, contrary to the commenters' claims, the court's opinion clearly affords the Agency the discretion to determine the appropriate response to the remand and does not prevent the Agency from determining upon reconsideration that the program is no longer needed for a particular state with respect to a particular pollutant and consequently not establishing a replacement budget.

The commenters make several additional arguments in support of their contention that the FIP withdrawal is not responsive to the D.C. Circuit's instructions. One commenter asserts that because the court stated that the Agency could consider new information in responding to the remand, the court must have intended for the Agency's response to involve the establishment of replacement budgets. This claim is a *non sequitur*—the court's acknowledgement that additional information may be considered says nothing about what the Agency may or must conclude from consideration of that information. The same commenter also asserts that the Agency may not rely on lack of FIP authority as the basis for not establishing a revised budget because lack of FIP authority was not the basis cited by the court for remanding the budget. This claim is also a *non sequitur*—the Agency lacks authority to issue a revised budget and therefore may not do so, regardless of what additional defects the court may have cited in ordering the remand.

The other commenter asserts that the FIP withdrawal would disrupt allowance markets, contrary to the concern expressed by the D.C. Circuit that outright vacatur, rather than remand without vacatur, could have that impact. While the EPA agrees with the concern expressed by the court and the commenter regarding the potentially disruptive effects of outright vacatur on

[33] *See* 76 FR at 48242–44, tables V.D–5 and V.D–6.

[34] *See* projected 2014 base case maximum 24-hour $PM_{2.5}$ design value for Madison County, Illinois receptor 171191007 at B–70 of the CSAPR Final Rule Technical Support Document, available in the docket for this action.

[35] 76 FR at 48234–35.

[36] A third commenter states without further elaboration that it does not oppose the FIP withdrawal.

[37] 81 FR at 78960.

[38] *EME Homer City II,* 795 F.3d at 124, 138.

[39] *Id.* at 132 (emphasis added).

allowance markets, the Agency does not agree that the court's concern regarding unintended consequences of a judicial vacatur provides a basis for not taking final action at this time to withdraw the Texas FIP requirements, for two reasons. First, the EPA believes that the court did not intend for its expression of concern to constrain the Agency's range of possible responses to the remand. As discussed above, it is clear from the opinion that the court anticipated the possibility that upon reconsideration the EPA would determine that some, or even all, of the remanded budgets should be withdrawn and not replaced. Second, in this instance, emissions data reported by the EGUs covered by the CSAPR trading programs for SO_2 and annual NO_X demonstrate that withdrawal of the FIP provisions requiring Texas EGUs to participate in these programs will not cause allowance market disruption for the programs' remaining participants. Under both programs, the totals of the emissions reported by participating EGUs for both 2015 and 2016 in states other than Texas were less than the sums of the Phase 2 emissions budgets for these other states.[40] Likewise, under both programs the totals of the emissions reported by Texas EGUs for both 2015 and 2016 were less than the Texas Phase 2 budgets.[41] The elimination from the programs of Texas EGUs and the allowances allocated to Texas EGUs is therefore not expected to cause either shortages of allowances available for purchase by EGUs in the other states or the loss of an important market for sale of surplus allowances by EGUs in the other states. In these circumstances, the EPA anticipates that the FIP withdrawal will have little impact on the allowance market in either trading program.

With regard to the two commenters' preferred response to the remand—that the EPA establish a revised, less stringent SO_2 budget for Texas EGUs and implement that budget through a revised FIP—such an action is infeasible because the Agency lacks the necessary legal authority. In this action, the EPA is finalizing the proposed finding that Texas no longer has a transport obligation under CAA section 110(a)(2)(D)(i)(I) for the 1997 annual $PM_{2.5}$ NAAQS. That finding addresses the deficiency in the Texas SIP that was the basis for issuance of the withdrawn FIP requirements and, therefore, because there is no longer a deficiency, the Agency no longer has authority to issue revised FIP requirements.[42] The reasons for the finding are discussed above and were discussed at length in the proposal.[43]

With regard to the commenters' suggested alternative response to the remand—that the EPA allow Texas to submit a CSAPR SIP with a higher SO_2 budget in order to allow the state to rely on CSAPR participation as an SO_2 BART alternative even if the state's EGUs are no longer subject to a CSAPR FIP SO_2 budget—the comment is not properly directed to the EPA, because Texas has not expressed interest in submitting a CSAPR SIP.[44] Moreover, even if consideration of Texas' BART obligations were relevant for our action on remand, reliance on CSAPR participation with a higher budget would not automatically qualify as an SO_2 BART alternative under the terms of the CSAPR-better-than-BART rule. That rule allows a state to rely on its EGUs' participation in a CSAPR SIP trading program only if the EPA approves the SIP as ''meeting the requirements of'' the CSAPR regulations at 40 CFR 52.38 and 52.39.[45] As relevant here, the CSAPR regulations at § 52.39 expressly preclude a state's SO_2 emissions budget from exceeding the SO_2 emissions budget established under the CSAPR FIP trading program that the CSAPR SIP trading program would replace.[46] Thus, even if the D.C. Circuit's remand could serve as a basis for the EPA to approve a SIP revision that does not satisfy § 52.39 on the grounds that the state's transport obligations can be addressed by a less stringent budget, the CSAPR-better-than-BART rule at 40 CFR 51.308(e)(4) would not be satisfied. A SIP approved on such a basis could in theory provide a mechanism for Texas EGUs to participate in CSAPR with a higher SO_2 budget than the remanded FIP budget despite the Agency's lack of authority to set a revised SO_2 budget through a revised FIP. However, because of the increased SO_2 budget, such a SIP would not ''meet[] the requirements of . . . § 52.39'' and therefore would not allow the state to rely on its EGUs' participation in the CSAPR SIP trading program as an alternative to source-specific BART for SO_2.[47]

D. Consistency of Responses to Remand Across States

One commenter states that by withdrawing the FIP requirements the EPA is arbitrarily singling Texas out as the only state with a remanded CSAPR budget whose EGUs will lose the ability to rely on CSAPR participation as a BART alternative. The commenter further asserts that the Agency's ''sole purpose'' in withdrawing the FIP requirements is to facilitate the imposition of source-specific SO_2 BART requirements on Texas EGUs through a different action.

The EPA disagrees with these comments, which are entirely contrary to the record. First, on the question of uniform application of the CSAPR-better-than-BART regulations, no state whose EGUs do not participate in a CSAPR trading program for a given pollutant can rely on CSAPR participation as a BART alternative for that pollutant. In response to the D.C. Circuit's remand of CSAPR Phase 2 budgets, the EPA has withdrawn or expects to withdraw all fifteen remanded budgets. As explained in the proposal, in thirteen instances, the state will retain eligibility to rely on the CSAPR-better-than-BART rule for the pollutant in question through either the EPA's establishment of a new CSAPR budget to address a more stringent NAAQS (eight seasonal NO_X budgets), the state's sources' continued participation in a different CSAPR trading program for the same pollutant (two seasonal NO_X budgets), or the state's voluntary adoption in a SIP revision of a CSAPR state budget as stringent as the remanded CSAPR FIP budget (three SO_2 budgets).[48] In the remaining two instances where a remanded budget is being withdrawn and none of the three options for preserving eligibility to rely on CSAPR-better-than-BART applies—Texas' SO_2 budget and Florida's seasonal NO_X budget—the state is losing the

[40] *See* ''2015–2016 Compliance Summary for CSAPR SO_2 Group 2 and NO_X Annual Trading Programs,'' available in the docket for this action.

[41] *Id.*

[42] *See* CAA section 110(c).

[43] 81 FR at 78960.

[44] Texas did not submit comments on the proposal for this action.

[45] 40 CFR 51.308(e)(4).

[46] 40 CFR 52.39(i)(1)(i).

[47] To the extent the commenters are suggesting that the D.C. Circuit's holdings in *EME Homer City II* require the Agency to find that a SIP with a revised, higher SO_2 budget would somehow satisfy the CSAPR-better-than-BART rule despite its plain language, the Agency disagrees. The court held that the remanded budgets may over-control relative to the states' transport obligations, but did not determine that the budgets are more stringent than necessary to serve as an alternative to source-specific BART. Further, the CSAPR-better-than-BART rule rests on an evaluation of the projected visibility impacts from CSAPR implementation assuming the final CSAPR Phase 2 budget stringencies (including the 2012 CSAPR budget revisions, which were accounted for in the analysis for the final CSAPR-better-than-BART rule). Given this, continuing to enforce the CSAPR-better-than-BART rule's requirement that a state's participation in CSAPR through a SIP must ''meet[] the requirements of . . . § 52.39''—including the requirement for a state budget no less stringent than was analyzed for purposes of promulgating the rule—is entirely reasonable.

[48] 71 FR at 78956–57.

opportunity to rely on CSAPR participation as a BART alternative for that pollutant.[49] Thus, Texas is being treated the same as every other state with respect to use of the CSAPR-better-than-BART rule.[50]

Second, on the question of the EPA's purpose in withdrawing the FIP requirements, that purpose is to address the court's remand. As explained in the proposal, before initiating this action, the EPA communicated with officials in all four states with remanded SO_2 budgets—Alabama, Georgia, South Carolina, and Texas—regarding the EPA's intent to respond to the remand of the Phase 2 SO_2 budgets by withdrawing the FIP provisions requiring the states' EGUs to participate in the CSAPR federal trading programs for SO_2 and annual NO_X.[51] The EPA explained that each state would lose its ability to rely on CSAPR participation as a BART alternative for SO_2 and/or NO_X if its EGUs no longer participated in the CSAPR trading programs, but that the state could preserve that ability, if desired, by submitting a CSAPR SIP revision replacing the CSAPR federal trading programs with CSAPR state trading programs applying state-established budgets no less stringent than the remanded federally-established budgets (*i.e.,* budgets consistent with the 2012 CSAPR-better-than-BART analytic demonstration).[52] Alabama, Georgia, and South Carolina indicated their preference to pursue the SIP revision option. The EPA approved Alabama's CSAPR SIP revision in 2016 and, accordingly, the FIP provisions requiring its EGUs to participate in the CSAPR federal trading programs for SO_2 and annual NO_X have been automatically withdrawn.[53] Georgia and South Carolina committed to the EPA in 2016 to submit similar CSAPR SIP revisions by deadlines falling in September 2017 and August 2017, respectively.[54] Georgia has in fact now submitted its SIP to the EPA for approval,[55] South Carolina has submitted its proposed state CSAPR trading program rules and has requested that the EPA begin the SIP approval process under the Agency's parallel processing procedure,[56] and the EPA has proposed to approve both SIP revisions.[57] The CSAPR FIP provisions remain in place for the time being for EGUs in Georgia and South Carolina, and the EPA is not proposing their withdrawal at this time based on the reasonable expectation that such withdrawal will be automatically accomplished as a result of the Agency's action on those states' SIP submittals, just as with Alabama.[58] Because Texas has indicated that it will not submit a CSAPR SIP revision, the EPA is proceeding with this action to withdraw the FIP requirements for Texas EGUs, consistent with the intended approach previously communicated to officials for all four states. Texas has had the same set of options available to all four states with remanded SO_2 budgets and has selected a different option than the other three states.

E. Consistency of Consideration of D.C. Circuit's Holding Across States

One commenter asserts that the EPA has not analyzed whether other states covered by CSAPR are linked only to receptors for which the 2014 base case projections do not show air quality problems, and that ''[b]y not performing that analysis, the EPA is arbitrarily singling Texas out for removal from the CSAPR program.''

The EPA disagrees with these comments. With respect to the budgets that were not remanded by the court, the Agency has confirmed for each such budget that the state is linked to at least one receptor for which the base case 2014 air quality projections showed air quality problems. The court's holding as to lack of authority to establish Phase 2 emission reduction requirements for a state in the absence of any linkage to a projected air quality problem in the 2014 base case therefore does not extend to these budgets.[59]

With respect to the remanded budgets, the EPA again rejects the suggestion that Texas is being treated differently than any other state. As noted in the response above to the comments concerning the consistency of the Agency's responses to the remand,

[49] As noted in the proposal, 81 FR at 78962, n.55, the EPA has already approved the incorporation into Florida's SIP of determinations regarding source-specific NO_X BART. 77 FR 71111, 71113–14 (November 29, 2012); 78 FR 53250, 53267 (August 29, 2013).

[50] As a further example of the consistent treatment of Texas, the EPA notes that, despite the withdrawal of the Texas FIP requirements relating to annual NO_X emissions, the state will be able to continue to rely on the CSAPR-better-than-BART rule for NO_X as long as the state's EGUs continue to participate in a CSAPR trading program for seasonal NO_X emissions. *See* 81 FR at 78955 n.4 and 78956 n.7.

[51] *See* memo entitled ''The U.S. Environmental Protection Agency's Plan for Responding to the Remand of the Cross-State Air Pollution Rule Phase 2 SO_2 Budgets for Alabama, Georgia, South Carolina and Texas'' from Janet G. McCabe, EPA Acting Assistant Administrator for Air and Radiation, to EPA Regional Air Division Directors (June 27, 2016), available in the docket for this action. The memo directs the Regional Air Division Directors to share the memo with state officials. The EPA also communicated orally with officials in Alabama, Georgia, South Carolina, and Texas in advance of the memo.

[52] Although the D.C. Circuit remanded the states' Phase 2 SO_2 budgets because it determined that the budgets may be more stringent than necessary to address the states' identified $PM_{2.5}$ transport obligations, nothing in the court's decision affects the states' authority to seek incorporation into their SIPs of state-established budgets as stringent as the remanded federally-established budgets or limits the EPA's authority to approve such SIP revisions. *See* CAA sections 116, 110(k)(3).

[53] Air Plan Approval; Alabama; Cross-State Air Pollution Rule, 81 FR 59869 (August 31, 2016).

[54] *See* letters to Heather McTeer Toney, Regional Administrator, EPA Region 4, from Judson H. Turner, Director of the Environmental Protection Division, Georgia Department of Natural Resources (May 26, 2016) and from Myra C. Reece, Director of Environmental Affairs, South Carolina Department of Health and Environmental Control (April 19, 2016), available in the docket for this action. The EPA has conditionally approved the CAA section 110(a)(2)(D)(i)(II) prong 4 visibility element for multiple NAAQS in the Georgia and South Carolina SIPs based on each state's commitment to submit a CSAPR SIP revision. 81 FR 65899, 65900 (September 26, 2016) (Georgia); 81 FR 56512, 56513 (August 22, 2016) (South Carolina). Each state committed to submit its CSAPR SIP revision within one year of the date of the Agency's final conditional approval of the state's prong 4 SIP revision. Failure of a state to meet a commitment serving as the basis for a conditional SIP approval results in automatic conversion of the conditional approval to a disapproval.

[55] *See* letter to V. Anne Heard, Acting Regional Administrator, EPA Region 4, from Richard E. Dunn, Director, Environmental Protection Division, Georgia Department of Natural Resources (July 26, 2017), available in the docket for this action.

[56] *See* letter to V. Anne Heard, Acting Regional Administrator, EPA Region 4, from Myra C. Reece, Director of Environmental Affairs, South Carolina Department of Health and Environmental Control (May 26, 2017), available in the docket for this action. Under the parallel processing procedure, the EPA works closely with the state agency during regulatory development, and the state submits a copy of its proposed regulations to the EPA before completion of the state's public notice and adoption process. The EPA reviews the proposed state action, prepares a notice of proposed EPA action (approval or disapproval) for publication in the **Federal Register**, and provides public notice concurrently with the state's process. After the state adopts its final regulations and submits its formal SIP revision request, the EPA reviews the SIP submission for changes from proposal and either prepares a notice of final EPA action or, if the state has made significant changes, may re-propose before taking final EPA action. The public comment period on South Carolina's proposed regulations ended on June 26, 2017, and the state expects its final regulations to become effective in August 2017. *Id.*

[57] Air Plan Approval; Georgia; Cross-State Air Pollution Rule, 82 FR 38866 (August 16, 2017); Air Plan Approval; South Carolina; Cross-State Air Pollution Rule, 82 FR 37389 (August 10, 2017).

[58] If the EPA disapproves Georgia's or South Carolina's SIP submittal, the EPA will propose to withdraw the FIP provisions requiring that state's EGUs to participate in the CSAPR federal trading programs for SO_2 and annual NO_X, consistent with the action taken here for Texas EGUs.

[59] *See* 76 FR at 48241–44, tables V.D–2, V.D–3, V.D–5, and V.D–6 (annual and 24-hour $PM_{2.5}$ linkages); *id.* at 48246, tables V.D–8 and V.D–9 (ozone linkages); CSAPR Final Rule Technical Support Document at B–35 to B–92 (2014 base case maximum design values for annual and 24-hour $PM_{2.5}$); *id.* at B–4 to B–34 (2014 base case maximum design values for ozone). As discussed above, the relevant triggering values for annual and 24-hour $PM_{2.5}$ are 15.05 $\mu g/m^3$ and 35.5 $\mu g/m^3$, respectively. The relevant triggering value for ozone is 85 parts per billion (ppb). 76 FR at 48236.

the FIP requirements to comply with all the remanded budgets, not just the remanded Texas SO_2 budget, have been withdrawn or are expected to be withdrawn. Further, as discussed above, in the cases of ten of the eleven remanded seasonal NO_X budgets, the absence of air quality problems at the relevant receptors in the 2014 base case projections was expressly cited by the court as the basis for remanding the budgets. The EPA's reliance on the court's holding as applied to those states' ozone-related transport obligations with regard to the 1997 8-hour ozone NAAQS is indistinguishable from the EPA's reliance on the same holding as applied to Texas' $PM_{2.5}$-related transport obligations with regard to the 1997 annual $PM_{2.5}$ NAAQS.[60]

F. Potential Use of Texas FIP Budgets To Address a Different $PM_{2.5}$ NAAQS

Finally, the commenters state that the EPA should consider Texas's obligations to address interstate transport with respect to the 2006 24-hour $PM_{2.5}$ NAAQS and/or the 2012 annual $PM_{2.5}$ NAAQS before withdrawing Texas' FIP obligations. As noted in the proposal and discussed above, in the case of Texas, CSAPR FIP obligations related to $PM_{2.5}$ pollution were established with respect to the 1997 annual $PM_{2.5}$ NAAQS only, even though for other states the CSAPR FIPs were based on the states' transport obligations with respect to both the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS.[61] The commenters assert that failure to consider Texas' potential transport obligations with respect to the 2006 24-hour $PM_{2.5}$ NAAQS now before withdrawing the FIP obligations would be inconsistent with the manner in which the EPA responded to the D.C. Circuit's remand of seasonal NO_X budgets and inconsistent with data in the CSAPR record that links Texas to downwind air quality problems with respect to the 2006 24-hour $PM_{2.5}$ NAAQS.[62]

The EPA disagrees with this comment for three reasons. First, as noted above, the Agency is responding to the court's remand of all fifteen CSAPR Phase 2 SO_2 and seasonal NO_X budgets in the same way, namely by withdrawing the FIP provisions requiring affected EGUs to comply with the remanded budgets.[63] The differences noted by the commenters are differences only in the actions that are being coordinated with the responses, not differences in the responses themselves.

Second, the differences in the coordinated actions are reasonable given the differences in other regulatory activities being undertaken for the two pollutants. The EPA coordinated the withdrawal of the eleven remanded seasonal NO_X budgets addressing the 1997 8-hour ozone NAAQS with the establishment of new budgets for eight of those states addressing the 2008 8-hour ozone NAAQS because a rulemaking to address transported pollution with respect to the 2008 8-hour ozone NAAQS was actively under development at the time of the court's decision.[64] Under this circumstance, such coordination was efficient and fully consistent with the court's expressed intent to minimize market disruption and to continue to address statutory obligations to reduce transported pollution where appropriate. In contrast, no analogous opportunity is available to coordinate withdrawal of the remanded SO_2 budgets with another rulemaking addressing a more recent $PM_{2.5}$ NAAQS because states' transport obligations with respect to the 2006 24-hour $PM_{2.5}$ NAAQS have already been largely addressed through either SIPs or the CSAPR rulemaking, and the Agency has not identified interstate transport problems with respect to the 2012 annual $PM_{2.5}$ NAAQS sufficient to justify a new national rulemaking at this time.

Third, the EPA lacks authority to rely on a transport obligation for Texas with respect to either the 2006 24-hour $PM_{2.5}$ NAAQS or the 2012 annual $PM_{2.5}$ NAAQS as the legal basis to support imposing an SO_2 budget for the state via a FIP. Under CAA section 110(c), the Agency's authority to issue a FIP with respect to a particular state obligation arises either when the Agency finds that a state has failed to submit a required SIP or when the Agency disapproves a submitted SIP. Neither of these predicate events has occurred with regard to Texas' transport obligations under either the 2006 24-hour $PM_{2.5}$ NAAQS or the 2012 annual $PM_{2.5}$ NAAQS.[65] Commenters are correct that data in the final CSAPR record, as evaluated by the Agency when CSAPR was promulgated, showed that $PM_{2.5}$ pollution transported from Texas to downwind states exceeded the minimum threshold level used to establish which states might have transport obligations for the 2006 24-hour $PM_{2.5}$ NAAQS. However, as noted in the proposal[66] and discussed above, the 2014 base case air quality projections in the final CSAPR record, when reevaluated in light of the D.C. Circuit's holdings in *EME Homer City II,* would support a finding that as of the beginning of Phase 2 of the CSAPR trading programs for SO_2 and annual NO_X, Texas does not have an ongoing transport obligation with respect to the 2006 24-hour $PM_{2.5}$ NAAQS. Thus, even if the EPA had taken final action disapproving Texas' outstanding SIP submission addressing transported pollution with regard to the 2006 24-hour $PM_{2.5}$ NAAQS, such a disapproval would no longer provide a basis for the Agency to issue a FIP in this instance, because without any remaining transport obligation, there is no remaining SIP deficiency to address through a FIP.

[60] In the case of the last remanded seasonal NO_X budget—for Texas—the court remanded the budget on different grounds, and the EPA subsequently determined through further analysis that the state has no remaining transport obligation under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 8-hour ozone NAAQS. *See* 81 FR at 74524. In the cases of the remanded SO_2 budgets for Alabama, Georgia, and South Carolina, the states are adopting equally stringent CSAPR SIP budgets to replace the withdrawn FIP budgets in order to preserve the states' options to rely on the CSAPR-better-than-BART rule, thereby rendering moot any questions about the states' remaining transport obligations and EPA's authority or obligation to issue revised FIP budgets to address such transport obligations.

[61] *See* 81 FR at 78960 n.42; *see also* 76 FR at 48213, table III–1.

[62] One of the commenters asserts that ''under EPA's own theory,'' the existence of this data in the CSAPR final record mandates that the EPA consider the state's transport obligations with respect to the 2006 24-hour $PM_{2.5}$ NAAQS before withdrawing the FIP requirements. Wrongly attributing this ''theory'' to the Agency, the commenter ignores other factors the Agency must take into account before promulgating FIP requirements, such as whether a statutory condition establishing FIP authority has been satisfied. In any event, for this final action the Agency has expressly considered (and rejected) the option of leaving the Texas FIP requirements in place to address the state's transport obligations with respect to this NAAQS, as discussed in this section.

[63] As discussed in the proposal, addressing the remanded budgets by withdrawing the FIP requirements is also fully consistent with the manner in which EPA has responded to previous judicial remands regarding obligations of individual states under other EPA rules addressing multiple states' transport obligations. 81 FR at 78959.

[64] As noted in the proposal, for three of the eleven states with remanded seasonal NO_X budgets addressing the 1997 8-hour ozone NAAQS—Florida, North Carolina, and South Carolina—the EPA found no transport obligations with respect to the 2008 8-hour ozone NAAQS and did not establish seasonal NO_X budgets addressing that NAAQS. 81 FR at 78959.

[65] Texas has submitted SIPs intended to address its transport obligations under each of these NAAQS. In the case of the 2006 24-hour $PM_{2.5}$ NAAQS, the EPA has proposed to disapprove the state's transport SIP submittal, 76 FR 20602 (April 13, 2011), but has yet not taken final action. In the case of the 2012 annual $PM_{2.5}$ NAAQS, the EPA has not yet taken any action on the state's transport SIP submittal.

[66] 81 FR at 78955 n.5.

IV. Sensitivity Analysis Regarding CSAPR Participation as a BART Alternative

A. Summary

As explained in the proposal and summarized in section II.B, the EPA amended the Regional Haze Rule in 2012 to authorize states whose EGUs participate in CSAPR trading programs for a given pollutant to rely on CSAPR participation as a BART alternative for that pollutant. The CSAPR-better-than-BART rule rests on an analytic demonstration that implementation of CSAPR as expected to take effect at that time would achieve greater reasonable progress than BART toward the national goal of natural visibility conditions in Class I areas. As part of the proposal for this action, the EPA included a sensitivity analysis to the 2012 analytic demonstration showing that the 2012 analysis would have supported the same conclusion if the actions being taken in response to the D.C. Circuit's remand of various CSAPR Phase 2 budgets [67] had been reflected in the 2012 analysis. In this action, upon consideration of comments received, the EPA is affirming the sensitivity analysis from the proposal that concluded that the 2012 analytic demonstration is still valid and is consequently affirming that there is no need for revision of the CSAPR-better-than-BART rule as a result of the changes in CSAPR's geographic scope resulting from the Agency's set of responses to the *EME Homer City II* decision.

The original 2012 analytic demonstration supporting participation in CSAPR as a BART alternative was based on an air quality modeling analysis comparing projected visibility conditions at relevant locations (referred to in the proposal and here simply as ''Class I areas'') under three scenarios.[68] The first scenario reflected no implementation of either CSAPR or BART, the second scenario reflected implementation of presumptive source-specific BART for both SO_2 and NO_X at BART-eligible EGUs nationwide, and the third scenario reflected implementation of CSAPR in covered states and presumptive source-specific BART for each pollutant in states where CSAPR did not apply for that pollutant (the three scenarios are referred to here as the base case scenario, the BART scenario, and the original CSAPR scenario, respectively). The EPA used the results of the three scenarios to compare the projected visibility impacts of CSAPR and BART under a two-pronged ''better-than-BART'' test.[69] The first prong—a requirement that visibility must not decline in any Class I area under the proposed BART alternative—was evaluated by comparing the projected visibility conditions under the original CSAPR scenario and the base case scenario. The second prong—a requirement that there must be an overall visibility improvement on average across all affected Class I areas under the proposed BART alternative relative to source-specific BART—was evaluated by comparing the projected visibility conditions under the original CSAPR scenario and the BART scenario. Based on these comparisons, and also taking account of revisions made to CSAPR after the 2011 modeling but before or contemporaneous with the 2012 CSAPR-better-than-BART rule, the EPA concluded that the original CSAPR scenario satisfied both prongs of the test.

The EPA's proposed sensitivity analysis is set forth in detail in the proposal for this action.[70] To reiterate briefly, for the sensitivity analysis, the Agency identified a total of five changes in CSAPR's geographic scope expected to occur as a result of actions responding to the D.C. Circuit's remand: The removal of Florida, North Carolina, and South Carolina from CSAPR for seasonal NO_X; the removal of Texas from CSAPR for annual NO_X; and the removal of Texas from CSAPR for SO_2.[71] With respect to each of the four changes related to NO_X, the EPA explained that the change would not have caused a sufficiently large change in the modeled NO_X emissions in the original CSAPR scenario to materially alter the visibility impacts comparison. For North Carolina and South Carolina, this assessment was based on the fact that the states' EGUs would, or were expected to, remain subject to CSAPR for annual NO_X after the end of their CSAPR obligations for seasonal NO_X.[72] For Florida and Texas, this assessment was based on the small magnitudes of the differences in projected total NO_X emissions from the EGUs in each of those states between the original CSAPR scenario and the relevant other modeled scenarios, combined with the dominance of sulfate impacts compared to nitrate impacts on visibility (especially in the South).[73] With respect to the removal of Texas from CSAPR for SO_2, the EPA explained that the change would have caused a large reduction in the Texas SO_2 emissions as modeled in the original CSAPR scenario,[74] thereby causing the visibility impacts comparison to support the Agency's determination that CSAPR participation met the criteria for a BART alternative even more strongly than the comparison as originally performed in 2012. Thus, because the only material change from the original 2012 analytic demonstration would be the relative visibility improvement in a revised CSAPR scenario resulting from the removal of Texas from CSAPR for SO_2, the sensitivity analysis as proposed indicated that the 2012 analytic demonstration remains valid.

The EPA received substantive comments from two parties with respect to the proposed sensitivity analysis. One commenter agrees with the EPA's conclusion and with all but one detail of the EPA's methodology (which, if changed as suggested by the commenter, would strengthen the Agency's conclusion). The other commenter does not agree with either the conclusion or

[67] As described in sections II.A and III.D above, in addition to this action, the full set of actions being taken to respond to the remand includes the 2016 CSAPR Update (*see* note 14 above) withdrawing the remanded seasonal NO_X budgets for eleven states and establishing new seasonal NO_X budgets to address a more recent ozone NAAQS for eight of those states, the action approving Alabama's SIP revision establishing state CSAPR trading programs for SO_2 and annual NO_X to replace the corresponding federal CSAPR trading programs (*see* note 53 above), and expected actions to approve proposed SIP revisions for Georgia and South Carolina comparable to Alabama's SIP revision (*see* note 57 above).

[68] This background is set forth in greater detail in the proposal. *See* 81 FR at 78961–62.

[69] As described in the proposal, satisfaction of the two-pronged test based on an air quality modeling analysis is one of three ways that an alternative measure may be demonstrated to be ''better than BART'' under the Regional Haze Rule. 81 FR at 78957.

[70] 81 FR at 78961–64.

[71] For purposes of the sensitivity analysis, the EPA conservatively did not consider the increased stringency of the CSAPR seasonal NO_X budgets established in the CSAPR Update. *See generally* 81 FR 74504.

[72] 81 FR at 78962.

[73] *Id.* at 78962 (Florida), 78963 (Texas).

[74] As noted above and discussed in the proposal, the original CSAPR scenario reflected projected implementation of CSAPR in covered states and presumptive source-specific BART in states where CSAPR did not apply for a pollutant. If Texas had not been expected to be covered by CSAPR for SO_2, the CSAPR scenario would therefore have reflected SO_2 emissions from Texas EGUs consistent with the implementation of presumptive source-specific SO_2 BART instead of participation in CSAPR. While EPA projected that the CSAPR region overall would have substantially lower SO_2 emissions under CSAPR than under source-specific BART, for some individual states, including Texas, SO_2 emissions under source-specific BART were projected to be lower than under CSAPR. Thus, removing Texas from CSAPR for SO_2 in the CSAPR-better-than-BART analytic demonstration would have resulted in a decrease in projected SO_2 emissions in the CSAPR scenario as modeled for the demonstration. *See* 81 FR at 78962–63. In the proposal, the EPA identified the minimum amount of the projected decrease in Texas SO_2 emissions as 127,300 tons, based on the difference between projected Texas SO_2 emissions under the original CSAPR and BART scenarios. *Id.; see also* ''Projected Changes in Texas Emissions, Fossil Generation, and Fuel Usage Between the Base Case, BART, and Original CSAPR Scenarios,'' available in the docket for this action.

the methodology, providing several reasons. The remainder of this section summarizes the opposing commenter's principal comments on this topic and provides the Agency's response.

B. Continued CSAPR Participation by Georgia and South Carolina

The commenter states that in order to analyze the impacts on the CSAPR-better-than-BART analytic demonstration from changes caused by the remand, in addition to any other changes evaluated, the EPA must also evaluate the removal of Georgia and South Carolina from CSAPR's SO_2 programs, both because the D.C. Circuit remanded their SO_2 budgets as invalid and because in the commenter's view it is impermissible to rely in such a sensitivity analysis on mere commitments from those states to submit CSAPR SIPs in the future. Further, according to the commenter, allowing these states to continue to participate in CSAPR and then rely on such participation as a BART alternative after their SO_2 budgets have been remanded would be inconsistent with the EPA's previous determinations that states could no longer indefinitely rely on participation in the former Clean Air Interstate Rule (CAIR) trading programs as a BART alternative after the D.C. Circuit found CAIR to be an invalid rule that must be replaced.[75]

The EPA disagrees with the comment that the Agency must consider Georgia and South Carolina ineligible to continue to participate in CSAPR's SO_2 programs as a consequence of the remand of their FIP budgets. The CSAPR regulations expressly provide for approval of CSAPR SIPs that meet certain conditions as replacements for CSAPR FIPs, and Georgia and South Carolina (as well as Alabama) have elected to submit such SIPs. The comparison that the commenter draws to the EPA's previous findings that states may no longer rely on participation in CAIR as a BART alternative is inapt, because the basis for such previous findings was that CAIR itself (including its trading programs) would not exist, not that particular CAIR budgets were invalid. Here, the CSAPR trading program will still exist, making it possible for the states to continue to participate in CSAPR through voluntary SIPs notwithstanding the invalidation of the EPA's authority to require compliance with the remanded budgets through FIPs addressing the states' transport obligations.

The EPA considers the comment about reliance on mere commitments to submit SIPs to be largely moot because in the interval between submission of the comment and finalization of this action, Georgia has submitted its SIP revision and South Carolina has submitted its proposed state regulations and has requested that EPA begin the SIP approval process under the Agency's parallel processing procedure.[76] Each of the state trading program rules includes a state budget for SO_2 or annual NO_X emissions equal to that state's current FIP budget. To the extent the commenter believes that for purposes of a sensitivity analysis the Agency may rely only on a SIP that has been approved and not on a SIP or proposed state rule that has been submitted for EPA approval but not yet approved, the Agency disagrees. Both states' rules take the approach of incorporating by reference the federal CSAPR trading program rules, including the relevant budget amounts, so there are no substantive differences between the state trading program rules being adopted by the states for inclusion in their SIPs and the federal trading program rules that are being replaced. The Agency has proposed to approve both states' SIP revisions[77] and at this time is unaware of any reason why the proposed approvals should not be finalized. In these circumstances, the EPA believes it is reasonable to rely on the SIP submittals for purposes of supporting an analytic assumption that Georgia and South Carolina will continue to participate in CSAPR's SO_2 and annual NO_X programs at the states' current budget levels.[78]

C. Appropriateness of Continued Reliance on Original CSAPR-Better-Than-BART Analysis

The commenter states that the sensitivity analysis is arbitrary because it is based on outdated material, and that instead of evaluating whether the 2012 analytic demonstration remains valid, the EPA must perform an entirely new analytic demonstration based on a new air quality modeling analysis using more current data.

The EPA disagrees with this comment. While criticizing aspects of the Agency's analytic methodology, the commenter does not dispute that the sensitivity analysis as conducted by the EPA using that methodology shows that the 2012 analytic demonstration would have been strengthened rather than weakened by the changes in CSAPR's geographic scope that are occurring as a result of the D.C. Circuit's remand. (The methodological criticisms are addressed as the next comment below.) Further, the commenter offers no compelling support for the suggestion that, in the absence of any reason to doubt the conclusion from the 2012 analytic demonstration, the EPA must nevertheless conduct an entirely new demonstration. As an asserted legal rationale for the need for a new analysis, the commenter cites the Regional Haze Rule provisions for approval of BART alternatives, noting that the provision that the EPA followed in approving the CSAPR-better-than-BART rule requires a demonstration based on an air quality modeling analysis.[79] The EPA has performed one such air quality modeling analysis and in this action has shown that the analysis already performed would continue to support a conclusion that CSAPR meets the criteria for a BART alternative notwithstanding changes in CSAPR's geographic scope. Contrary to the commenter's suggestion, the regulations do not say that the EPA must perform an entirely new analysis. Similarly, the commenter's assertion that changes in industry data since 2011 necessitate a new analytic demonstration amounts to a call for recurring demonstrations that a BART alternative results in greater reasonable progress than BART as the industry evolves, rather than a one-time demonstration when the alternative is approved. The regulations include no such requirement for recurring demonstrations.

D. Possible Changes in the Geographic Distribution of Emissions

The commenter states that the EPA's methodology for conducting the sensitivity analysis as set forth in the proposal failed to adequately consider whether changes in a revised CSAPR scenario regarding the geographic distribution of emissions across states or

[75] In 2005, the EPA promulgated the Clean Air Interstate Rule (CAIR) addressing certain interstate air pollution reduction obligations, 70 FR 25162 (May 12, 2005), and amended the Regional Haze Rule to allow participation in CAIR to be relied on as a BART alternative (the CAIR-better-than-BART rule), 70 FR 39104 (July 6, 2005). The D.C. Circuit upheld the CAIR-better-than-BART rule, *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333 (D.C. Cir. 2006), but later found CAIR invalid and remanded that rule to the Agency for replacement, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), *modified on rehearing,* 550 F.3d 1176 (D.C. Cir. 2008). The Agency then replaced CAIR with CSAPR, 76 FR 48208, and replaced the CAIR-better-than-BART rule with the CSAPR-better-than-BART rule, 77 FR 33642. In addition, following the remand of CAIR, the Agency disapproved SIP submissions for several states seeking to rely on CAIR as a BART alternative, *e.g.,* 77 FR at 33647.

[76] *See supra* notes 55 and 56.

[77] *See supra* note 57.

[78] As discussed in section III.D above, both states continue to participate in the CSAPR SO_2 and annual NO_X programs through FIPs while Agency action on their SIP submittals is pending.

[79] *See* 40 CFR 51.308(e)(3).

within individual states might lead to violations of the analytic criteria that the EPA relied on to find that CSAPR qualifies as a BART alternative. In particular, the commenter raises the theoretical possibility that, in a revised CSAPR scenario where Texas EGUs no longer participate in CSAPR for SO_2, some individual sources in other CSAPR states could buy additional allowances and increase their emissions, and that such increases in emissions in turn could cause adverse visibility impacts in some individual Class I areas (thereby violating the first prong of the two-pronged test described above). More generally, the commenter asserts that without new modeling the EPA ''has no data'' and has ''simply assume[d]'' that the two prongs of the test would be satisfied under such a revised scenario.

As an initial matter, the EPA disagrees with the commenter's summary characterization of the proposed sensitivity analysis as not being grounded in data. To the contrary, the Agency's proposed conclusions explicitly rely on data drawn from the modeling results in the record for the CSAPR-better-than-BART rule. The EPA explained in the proposal, first, how the data from the earlier rulemaking record showed that a revised CSAPR scenario would reflect a projected reduction in Texas SO_2 emissions of 127,300 tons (or more)[80] along with projected increases in Florida and Texas NO_X emissions of at most a few thousand tons and, second, why it was logical to conclude from these projected emissions changes that, relative to the modeled BART and base case scenarios, the revised CSAPR scenario would have shown even larger visibility improvements than the original CSAPR scenario.[81] The commenter provides no data of any kind, let alone data that might challenge the data presented in the proposal.

Turning to the commenter's more specific methodological criticism—that the Agency has not sufficiently considered whether shifts in the geographic distribution of emissions might lead to violations of the two-pronged test—the EPA agrees that the potential for such shifts was not expressly addressed in the sensitivity analysis as proposed. For the final action, the EPA has therefore performed further analysis to address this comment, focusing on the specific circumstance identified by the commenter—shifts associated with the removal of Texas EGUs from CSAPR for SO_2—because the Agency agrees that this is the most significant change to CSAPR among the actions that have been or are expected to be taken in response to the D.C. Circuit's remand.[82] The further analysis is based on state- and unit-level data disaggregated from the projections of electricity generation, fuel usage, and emissions developed for the base case, BART, and original CSAPR scenarios that were compared in the 2012 analytic demonstration.[83]

Based on this additional analysis, the EPA finds that, in addition to the projected SO_2 emissions reduction of at least 127,300 tons in Texas identified in the proposal,[84] a revised CSAPR scenario without Texas in CSAPR for SO_2 could also reflect a projected aggregated increase in SO_2 emissions of approximately 22,300 tons in the six other states in the CSAPR SO_2 Group 2 trading program (Alabama, Georgia, Kansas, Minnesota, Nebraska, and South Carolina). The reason for this adjustment is that in the original CSAPR scenario, Texas EGUs were projected to emit 22,300 tons of SO_2 in excess of the state's SO_2 budget.[85] This would have been possible through the use of allowances purchased from EGUs in other SO_2 Group 2 states. Under a revised CSAPR scenario where Texas EGUs are no longer part of the CSAPR trading program, Texas EGUs would no longer purchase the 22,300 allowances from the other states, and the EGUs in those other states could potentially use those allowances to increase their own collective SO_2 emissions. Much or all of the total potential increase in emissions in the other states would be projected to occur in Alabama and Georgia, because in the original CSAPR scenario the collective emissions from Kansas EGUs were projected to already be at the state's ''assurance level''—the emissions level above which EGUs trigger a CSAPR provision requiring the surrender of three allowances instead of one allowance per ton of emissions—and the collective emissions from Minnesota, Nebraska, and South Carolina EGUs were projected to already be close to their states' respective assurance levels.[86] After accounting for the potential 22,300-ton offsetting adjustment, the net regional SO_2 reduction under the revised CSAPR scenario relative to the original CSAPR scenario would be projected to be approximately 105,000 tons (or more) instead of 127,300 tons (or more) as described in the proposed sensitivity analysis.[87] For the reasons below, the EPA has considered both the projected decrease in Texas SO_2 emissions and the projected aggregated increase in SO_2

[80] The 127,300-ton amount was described in the proposal as the minimum reduction in projected Texas SO_2 emissions because it did not reflect a 50,500-ton increase in the Texas SO_2 budget that occurred after the original CSAPR scenario was modeled. If that budget increase had been reflected in the original CSAPR scenario, modeled Texas EGU SO_2 emissions in that scenario would likely have been higher, potentially by the full 50,500-ton amount. The CSAPR budget increase would have had no effect on Texas EGUs' modeled SO_2 emissions under BART. As a consequence, the 127,300-ton minimum estimate of the reduction in projected Texas SO_2 emissions caused by removing Texas EGUs from CSAPR for SO_2, which are computed as the difference between Texas EGUs' collective emissions in the original CSAPR scenario and the BART scenario, may be understated by as much as 50,500 tons.

[81] 81 FR at 78962–64.

[82] As summarized above, the Agency explained in the proposal that the removal of Florida, North Carolina, South Carolina, and Texas EGUs from CSAPR for either seasonal or annual NO_X, as applicable, would not have caused sufficient changes in modeled NO_X emissions in a revised CSAPR scenario to materially alter the visibility impacts comparison, in some instances because the EGUs would remain subject to another CSAPR NO_X program and in some instances because of the small magnitudes of the differences in projected total NO_X emissions from the EGUs in each of those states between the original CSAPR scenario and the relevant other modeled scenarios, combined with the dominance of sulfate impacts compared to nitrate impacts on visibility (especially in the South). The EPA believes these same factors likewise indicate that the visibility impacts of any potential shifts in the geographic distribution of NO_X emissions related to removal of these states from the CSAPR NO_X programs would not be material to either prong of the two-pronged visibility impacts comparison.

[83] The state- and plant-level data are derived from the unit-level data in three spreadsheets included in the final CSAPR-better-than-BART rulemaking record and available in the docket for this action: IPM Parsed File for CSAPR Base Case Scenario 2014 (EPA–HQ–OAR–2011–0729–0004), IPM Parsed File for National BART Scenario 2014 (EPA–HQ–OAR–2011–0729–0008), and IPM Parsed File for CSAPR–BART Scenario 2014 (EPA–HQ–OAR–2011–0729–0006).

[84] *See supra* note 74.

[85] *See* ''Projected Interstate Trading of CSAPR SO_2 Group 2 Allowances in the Original CSAPR Scenario,'' available in the docket for this action.

[86] *Id.*

[87] It is possible that if the original CSAPR scenario that includes Texas in CSAPR for SO_2 had been remodeled to include the 50,500 increase in the Texas SO_2 budget described in the proposal and in footnote 80, Texas EGUs would have been projected to purchase either more or less than 22,300 allowances from EGUs in other CSAPR SO_2 Group 2 states, and that a revised CSAPR scenario in which Texas was removed from CSAPR for SO_2 would therefore have shown the other Group 2 states increasing their SO_2 emissions by this different amount. Regardless of the amount or direction of any modeled change in Texas EGUs' CSAPR allowance purchases, that change would generally have been matched by an equal and opposite change in Texas EGUs' projected emissions under CSAPR, with the result that the overall net projected reduction in emissions caused by removing Texas from CSAPR for SO_2 would continue to be at least 105,000 tons. The maximum amount of CSAPR SO_2 allowances that Texas could purchase from other states and use in a given year without incurring 3-for-1 allowance surrender requirements is approximately 53,000 tons, which is the amount of Texas' SO_2 variability limit—the difference between the state's budget and its assurance level—under the CSAPR regulations. *See* 40 CFR 97.710(b)(7).

emissions in the other states and has concluded that the two-pronged CSAPR-better-than-BART test described above would continue to be satisfied.

As summarized above, the first prong of the two-pronged test requires that visibility conditions must not decline in any Class I area. In the 2012 analytic demonstration, the EPA evaluated this prong by comparing visibility impacts at each affected Class I area under the original CSAPR scenario and the base case scenario. The situation identified by the commenter in which emissions under a revised CSAPR scenario might rise at some individual EGUs sufficiently to cause a decline in visibility at some individual Class I area relative to visibility conditions in the base case scenario—that is, without either CSAPR or BART—would be a very unusual event and likely can be ruled out as impossible, or nearly so, in a scenario such as the revised CSAPR scenario being considered. Under the base case scenario, EGUs incur no cost at all under CSAPR for emitting a ton of SO_2. In contrast, under either the original CSAPR scenario or a revised CSAPR scenario, EGUs would incur some cost per ton of SO_2 emissions under CSAPR, and where that new cost is the principal change from the base case scenario, EGUs that emit SO_2 would generally be projected to either decrease or maintain their emissions relative to the base case scenario where that cost was not present. If in a revised CSAPR scenario, allowances are more plentiful and the cost incurred per ton of SO_2 emissions therefore is less than the cost per ton under the original CSAPR scenario, some EGUs that emit SO_2 would be projected to reduce their SO_2 emissions by a smaller amount than in the original CSAPR scenario, but they generally would not be projected to significantly *increase* their emissions relative to the base case scenario. An exception to this general principle could occur if some other factor influencing EGUs' operating decisions, such as electricity demand or relative fuel prices, also changed. The EPA therefore considered whether the removal of Texas from CSAPR could have been projected to result in any material change in demand for generation from other states or relative fuel prices in other states in a revised CSAPR scenario compared to the original CSAPR scenario.[88]

With respect to the possibility of changes in electricity demand in other states, record data show that, relative to the original CSAPR scenario, aggregated 2014 generation from fossil-fired Texas EGUs was projected to increase by 0.2% in the BART scenario (which is used here as a proxy representing the operating behavior of Texas EGUs in a revised CSAPR scenario), indicating that removal of Texas EGUs from CSAPR for SO_2 and implementation of SO_2 BART would not be projected to result in an increase in emissions outside Texas caused by a shift in generation from Texas to other states.[89]

With respect to changes in relative fuel prices in other states, record data show that, relative to the original CSAPR scenario, in the BART scenario Texas EGUs were projected to decrease their use of subbituminous coal by 68 trillion Btus (TBtu), increase their use of lignite by 66 TBtu, and increase their use of other fossil fuels (predominantly natural gas) by 11 TBtu.[90] The changes in projected Texas usage of subbituminous coal and natural gas are less than 1% of the projected total industry usage of those fuels nationwide under the original CSAPR scenario, indicating that there is no reason to expect material impacts on prices or usage of those fuels in other states. Unlike subbituminous coal and natural gas, lignite is an inherently local fuel that is consumed near the point of extraction because the fuel's low energy content per unit of weight makes shipment over long distances uneconomic. Thus, although the increase in Texas EGUs' projected usage of lignite is fairly large (8.2% of projected national usage of lignite under the original CSAPR scenario), any resulting increase in the local prices of lignite would not be expected to affect the mix of fuels used in other states.

For further confirmation of the applicability here of the general principle discussed above—namely, that in a modeled CSAPR scenario, EGUs that emit SO_2 would generally be projected to either decrease or maintain their emissions and not to increase their emissions relative to the base case scenario—the EPA compared the projected unit-level SO_2 emissions in the original CSAPR and base case scenarios for all coal-fired EGUs in the seven states in the CSAPR SO_2 Group 2 trading program. The results of the comparison clearly indicate that the general principle applies in this instance: 77 Units were projected to reduce their SO_2 emissions by 1,000 tons or more (in amounts up to 57,000 tons), 106 units were projected to essentially maintain their SO_2 emissions (increasing or decreasing by between 0 and 1,000 tons), and 2 units were projected to increase their SO_2 emissions by approximately 1,100 tons each.[91] A similar comparison at the state level shows that collective SO_2 emissions from the sets of EGUs in each of the seven states were also projected to decrease from the base case scenario to the original CSAPR scenario (in amounts ranging from 1,900 tons for Nebraska to 248,800 tons for Alabama).[92] In combination with the data above showing that removal of Texas from CSAPR for SO_2 would not be expected to cause changes in demand for generation or relative fuel prices in other states, the EPA believes that these data on how EGUs were projected to comply with CSAPR in the original CSAPR scenario indicate that in a revised CSAPR scenario where Texas is removed from CSAPR for SO_2 and 22,300 additional allowances (or up to 53,000 allowances, as noted earlier[93]) therefore become available to the EGUs in the other SO_2 Group 2 states, few if any EGUs would respond to the availability of the additional allowances by increasing their emissions materially above their emissions in the base case scenario. Further, even if some EGUs did increase their emissions above their emissions in the base case scenario, because of the regional nature of sulfate formation from SO_2 emissions and the very large decreases in SO_2 emissions across the broader region, the EPA believes that any such local increase would be unlikely to cause localized visibility degradation in any Class I area near a CSAPR state affected by the removal of Texas from CSAPR for SO_2. In consequence, the Agency finds it reasonable to conclude that in such a revised CSAPR scenario, no such Class I areas would experience declines in visibility conditions relative to the base case scenario.

The second prong of the two-pronged test requires the average projected

[88] Although the analysis focuses on other CSAPR states, consistent with the concerns raised by the commenter, the EPA notes that absent changes in generation demand or relative fuel prices, removal of Texas from CSAPR would also be expected not to affect the operating decisions of EGUs in non-CSAPR states.

[89] *See* ''Projected Changes in Texas Emissions, Fossil Generation, and Fuel Usage Between the Base Case, BART, and Original CSAPR Scenarios,'' available in the docket for this action. Because there is little difference in NO_X emissions from Texas EGUs between the original CSAPR scenario, the BART scenario, and the base case scenario, *id.,* the EPA considers the BART scenario a reasonable emissions proxy for a revised CSAPR scenario in which Texas EGUs would be subject to BART for SO_2 but not for NO_X.

[90] *See id.*

[91] *See* ''Projected Changes in Unit-Level Emissions Between the Base Case and Original CSAPR Scenarios,'' available in the docket for this action.

[92] *See id.*

[93] *See supra* note 87.

visibility improvement across all affected Class I areas to be greater under the BART alternative than under BART. In the proposal, the EPA proposed to conclude that this prong would be easily satisfied under the revised CSAPR scenario because Texas EGUs would be modeled in the revised CSAPR scenario as subject to SO_2 BART instead of being subject to CSAPR for SO_2, and the record data showed that Texas EGUs' projected SO_2 emissions would be at least 127,300 tons lower under BART than under CSAPR. As discussed above, based on further analysis the EPA concludes that the decrease in projected Texas SO_2 emissions could potentially be partially offset by an increase in projected SO_2 emissions in other CSAPR SO_2 Group 2 states, most likely Alabama or Georgia. The EPA believes that such a revised CSAPR scenario would continue to show greater average visibility improvement than the BART scenario (and greater than the original CSAPR scenario), again easily passing the second prong of the two-pronged test. Any reduction in visibility improvement in Class I areas near Alabama, Georgia, or the other Group 2 states relative to the original CSAPR scenario would be more than offset by greater visibility improvement in Class I areas near Texas.[94] Due to the regional nature of sulfate particulate matter formation, it is highly likely that, like the original CSAPR scenario, the revised CSAPR scenario would show greater visibility improvement on average across all Class I areas than the BART scenario. The commenters did not present any information to indicate otherwise, and the EPA is not aware of any such information.

E. Validity of 2012 Analytic Demonstration Prior to CSAPR Changes

Finally, the commenter asserts that regardless of the character of the sensitivity analysis itself, the original 2012 CSAPR-better-than-BART analytic demonstration was arbitrary, rendering any sensitivity analysis performed regarding the original demonstration arbitrary. In support of this claim, the commenter incorporates by reference all criticisms of the original analytic demonstration contained in the comments submitted by the commenter in the original CSAPR-better-than-BART rulemaking as well as all criticisms contained in the commenter's brief in the pending litigation challenging the CSAPR-better-than-BART rule.

The EPA rejects these comments as both improperly raised and outside the scope of this proceeding. The EPA appreciates the value of public input in the rulemaking process and seeks to fulfill its legal obligation to consider and respond to all substantive comments that are ''raised with reasonable specificity,'' [95] but catch-all references to whatever statements may have been made in another proceeding do not meet this standard. Moreover, even if they had been properly raised, comments concerning the legal validity of the original 2012 analytic demonstration are beyond the scope of this rulemaking, which concerns only the sensitivity analysis addressing the effect on the 2012 analytic demonstration of changes in CSAPR's geographic scope resulting from the D.C. Circuit's remand (as well as the withdrawal of Texas CSAPR FIP requirements for SO_2 and annual NO_X and the finding as to Texas' remaining transport obligation under CAA section 110(a)(2)(D)(i)(I) regarding the 1997 annual $PM_{2.5}$ NAAQS). Arguments concerning the original 2012 analytic demonstration should be, and have been, raised in the original CSAPR-better-than-BART rulemaking and in the pending litigation over that rule.

V. Description of Amendments to Regulatory Text

In order to implement the withdrawal of the FIP provisions requiring Texas EGUs to participate in the CSAPR NO_X Annual Trading Program and the CSAPR SO_2 Group 2 Trading Program with regard to emissions occurring in Phase 2 of those programs, the EPA is amending the regulatory text at 40 CFR 52.38(a)(2), 52.39(c), 52.2283(c), and 52.2284(c) to provide that Texas EGUs are subject to requirements under these two programs with regard to emissions occurring in 2015 and 2016 only. Conforming amendments to cross-references are being made at § 52.38(a)(3), (a)(4), (a)(5), (a)(6), and (a)(8)(iii) and § 52.39(g), (h), (i), (j), and (m)(3).

The EPA is also clarifying the CSAPR regulations by adding the introductory headings ''Annual emissions'' and ''Ozone season emissions'' to § 52.38(a) and (b), respectively, and by amending the wording of the regulatory text at §§ 52.38(b)(2)(i) and 52.39(b) to parallel the wording of the newly amended regulatory text at §§ 52.38(a)(2)(i) and 52.39(c)(1). These editorial clarifications do not alter any existing regulatory requirements.

Finally, the EPA is correcting the CSAPR regulations applicable to South Carolina EGUs by amending the regulatory text at § 52.2141(b) to reference CSAPR SO_2 Group 2 allowances and 40 CFR part 97, subpart DDDDD instead of CSAPR SO_2 Group 1 allowances and 40 CFR part 97, subpart CCCCC. The corrections make the text at § 52.2141(b) consistent with the existing text at § 52.2141(a), and the two paragraphs together now correctly reflect the existing regulatory requirements applicable to South Carolina EGUs as already set forth at § 52.39(c) and (k).

VI. Statutory and Executive Order Reviews

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

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

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

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

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

C. Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act. The OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0667. The withdrawal of the FIP provisions in this action will eliminate the obligations of Texas sources to comply with the existing monitoring, recordkeeping, and reporting requirements under the CSAPR SO_2 Group 2 Trading Program and the CSAPR NO_X Annual Trading Program.

[94] The CSAPR-better-than-BART record shows that the Class I areas most impacted by Texas were projected to have greater modeled visibility improvement in the BART scenario (on the 20% best days) than in the CSAPR scenario. This indicates that there would have been additional visibility improvement in a revised CSAPR scenario in which Texas is not in CSAPR for SO_2 and is therefore modeled at BART SO_2 levels. Note that the average visibility improvements across all affected Class I areas as computed in the original CSAPR and BART scenarios are much closer on the 20% best days than on the 20% worst days. Therefore, in determining whether the second prong of the two-pronged test will be passed under a revised CSAPR scenario, the modeled results on the 20% best days are particularly important.

[95] CAA section 307(d)(7)(B).

D. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. 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 withdraws existing regulatory requirements for some entities and does not impose new requirements on any entity. We have therefore concluded that this action will either relieve or have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. This action simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid.

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. This action simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials while developing CSAPR. A summary of that consultation is provided in the preamble for CSAPR, 76 FR 48208, 48346 (August 8, 2011).

H. Executive Order 13045: Protection of Children From Environmental Health 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 simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid.

I. 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.

J. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes that this action is not subject to Executive Order 12898 because it does not establish an environmental health or safety standard. This action simply eliminates certain federal regulatory requirements that the D.C. Circuit has held invalid. Consistent with Executive Order 12898 and the EPA's environmental justice policies, the EPA considered effects on low-income populations, minority populations, and indigenous peoples while developing CSAPR. The process and results of that consideration are described in the preamble for CSAPR, 76 FR 48208, 48347–52 (August 8, 2011).

L. Congressional Review Act

This action is subject to the Congressional Review Act, 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).

M. Judicial Review and Determinations Under CAA Section 307(b)(1) and (d)

CAA section 307(b)(1) indicates which federal appellate courts have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit Court of Appeals if (i) the agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' This final action is ''nationally applicable.'' In addition, the EPA finds that all aspects of this action are based on a determination of ''nationwide scope and effect'' within the meaning of section 307(b)(1).

First, the EPA's withdrawal of FIP requirements under the CSAPR program for Texas is being undertaken in response to a remand by the D.C. Circuit in litigation that challenged numerous aspects of CSAPR with implications for multiple states and resulted in the remand of fifteen budgets for thirteen states. Retaining review in the D.C. Circuit is appropriate and avoids the potential that another court is forced to interpret the remand order of a sister circuit. Also, the finding that, after the FIP withdrawal, Texas has no remaining obligation to address interstate transport with respect to the 1997 annual $PM_{2.5}$ NAAQS is based on a common core of factual findings and analyses concerning the transport of pollutants between the different states subject to CSAPR, which is a nationally applicable program. Further, this action is based on a determination that modifies the scope and effect of CSAPR; thus, any judicial review of this action will necessarily implicate the national-level policies, technical analyses, or interpretations that undergird this nationwide program.

Second, in express consideration of the effect of the withdrawal of Texas FIP requirements accomplished through this final action, the EPA is affirming the continued validity of 40 CFR 51.308(e)(4), a regulatory provision available to each of the 27 States whose sources currently participate in one or more CSAPR trading programs. This determination affects the rights and interests of regulated parties and other stakeholders throughout the eastern United States relying on or otherwise affected by that regulatory provision.

For these reasons, this final action is nationally applicable and, in addition,

the Administrator finds that this final action is based on a determination of nationwide scope and effect for purposes of section 307(b)(1). Thus, pursuant to section 307(b) any petitions for review of this action must be filed in the D.C. Circuit within 60 days from the date of publication of this action in the **Federal Register**.

In addition, pursuant to CAA sections 307(d)(1)(B), 307(d)(1)(J), and 307(d)(1)(V), the Administrator determines that this action is subject to the provisions of section 307(d). CAA section 307(d)(1)(B) provides that section 307(d) applies to, among other things, ''the promulgation or revision of an implementation plan by the Administrator under [CAA section 110(c)].'' 42 U.S.C. 7607(d)(1)(B). Under section 307(d)(1)(J), the provisions of section 307(d) apply to the ''promulgation or revision of regulations . . . relating to . . . protection of visibility.'' 42 U.S.C. 7607(d)(1)(J). Under section 307(d)(1)(V), the provisions of section 307(d) also apply to ''such other actions as the Administrator may determine.'' 42 U.S.C. 7607(d)(1)(V). The agency has complied with the procedural requirements of CAA section 307(d) during the course of this rulemaking.

CAA section 307(b)(1) also provides that filing a petition for reconsideration by the Administrator of this rule does not affect the finality of the rule for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of the rule. Under CAA section 307(b)(2), the requirements established by this rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 21, 2017.

E. Scott Pruitt,

Administrator.

For the reasons stated in the preamble, part 52 of chapter I of 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 A—General Provisions

■ 2. Section 52.38 is amended by:
■ a. Adding a paragraph (a) heading;
■ b. Revising paragraph (a)(2);
■ c. In paragraph (a)(3) introductory text, removing the text ''(a)(2)'' and in its place adding the text ''(a)(2)(i) or (ii)'';
■ d. In paragraph (a)(4) introductory text, removing the text ''(a)(2)'' and in its place adding the text ''(a)(2)(i)'';
■ e. In paragraphs (a)(5) introductory text and (a)(6), removing the text ''(a)(2)'' and in its place adding the text ''(a)(2)(i)'', and removing the text ''(a)(1) through (4)'' and in its place adding the text ''(a)(1), (a)(2)(i), and (a)(3) and (4)'';
■ f. In paragraph (a)(8)(iii), removing the text ''(a)(1) through (4)'' and in its place adding the text ''(a)(1), (a)(2)(i), and (a)(3) and (4)'';
■ g. Adding a paragraph (b) heading; and
■ h. In paragraph (b)(2)(i), after the word ''emissions'' adding the word ''occurring''.

The additions and revisions read as follows:

§ 52.38 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?

(a) *Annual emissions.* * * *

(2)(i) The provisions of subpart AAAAA of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and each subsequent year: Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

(ii) The provisions of subpart AAAAA of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and 2016 only: Texas.

* * * * *

(b) *Ozone season emissions.* * * *

■ 3. Section 52.39 is amended by:
■ a. In paragraph (b), before the colon, adding the text ''with regard to emissions occurring in 2015 and each subsequent year'';
■ b. Revising paragraph (c);
■ c. In paragraph (g) introductory text, removing the text ''(c)'' and in its place adding the text ''(c)(1) or (2)'';
■ d. In paragraph (h) introductory text, removing the text ''(c)'' and in its place adding the text ''(c)(1)'';
■ e. In paragraphs (i) introductory text and (j), removing the text ''(c)'' two times and in its place adding the text ''(c)(1)''; and
■ f. In paragraph (m)(3), removing the text ''(c)'' and in its place adding the text ''(c)(1)''.

The revision reads as follows:

§ 52.39 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of sulfur dioxide?

* * * * *

(c)(1) The provisions of subpart DDDDD of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and each subsequent year: Alabama, Georgia, Kansas, Minnesota, Nebraska, and South Carolina.

(2) The provisions of subpart DDDDD of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2015 and 2016 only: Texas.

* * * * *

Subpart PP—South Carolina

§ 52.2141 [Amended]

■ 4. Section 52.2141, paragraph (b) is amended by removing the text ''Group 1'' two times and in its place adding the text ''Group 2'', and removing the text ''CCCCC'' two times and in its place adding the text ''DDDDD''.

Subpart SS—Texas

■ 5. Section 52.2283 is amended by revising paragraph (c)(1) and removing and reserving paragraph (c)(2).

The revision reads as follows:

§ 52.2283 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c)(1) The owner and operator of each source and each unit located in the State of Texas and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_X Annual Trading Program in subpart AAAAA of part 97 of this

chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

* * * * *

■ 6. Section 52.2284 is amended by revising paragraph (c)(1) and removing and reserving paragraph (c)(2).

The revision reads as follows:

§ 52.2284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

* * * * *

(c)(1) The owner and operator of each source and each unit located in the State of Texas and Indian country within the borders of the State and for which requirements are set forth under the CSAPR SO_2 Group 2 Trading Program in subpart DDDDD of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2015 and 2016.

* * * * *

[FR Doc. 2017–20832 Filed 9–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2017–0267; FRL–9968–62–Region 7]

Approval of Implementation Plans; State of Iowa; Elements of the Infrastructure SIP Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve elements of a State Implementation Plan (SIP) submission, and an amended SIP submission from the State of Iowa for the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). Infrastructure SIPs address the applicable requirements of Clean Air Act (CAA) section 110, which requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by the EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This direct final rule will be effective November 28, 2017, without further notice, unless EPA receives adverse comment by October 30, 2017. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2017–0267, to *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219 at (913) 551–7039, or by email at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?

EPA is approving elements of the 2010 SO_2 NAAQS infrastructure SIP submission from the State of Iowa received on July 29, 2013. Specifically, EPA is approving the following elements of section 110(a)(2): (A),(B),(C),(D)(i)(II)—prevent of significant deterioration of air quality (prong 3), and (D)(ii), (E) through (H), and (J) through (M). A Technical Support Document (TSD) is included as part of the docket to discuss the details of this action, including analysis of how the SIP meets the applicable 110 requirements for infrastructure SIPs.

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The state initiated public comment from April 6, 2013, to May 8, 2013. One comment was received and adequately addressed in the final SIP submission. This submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained in above preamble and in more detail in the TSD which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is approving elements of the July 23, 2013, infrastructure SIP submission from the State of Iowa, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2010 SO_2 NAAQS. As stated above, EPA is approving the following elements of section 110(a)(2): (A),(B),(C),(D)(i)(II)—prevent of significant deterioration of air quality (prong 3), and (D)(ii), (E) through (H), and (J) through (M). Details of the submission are addressed in the TSD, included as part of the docket, and discuss this approval action.

EPA is not taking action on section 110(a)(2)(I). Section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas. EPA does not expect infrastructure SIP submissions to address element (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. EPA will take action on part D attainment plan SIP submissions through a separate rulemaking governed by the requirements for nonattainment areas, as described in part D.

EPA is not taking action on section 110(a)(2)(D)(i)(I) prongs 1 and 2, and section 110(a)(2)(D)(i)(II) prong 4.

We are publishing this direct final rule without a prior proposed rule because we view this as a

noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of this issue of the **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision 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. 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. We will address all public comments in any subsequent final rule based on the proposed rule.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 2017. Filing a petition for reconsideration by the Administrator of this direct final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 20, 2017.

Cathy Stepp,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART52—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 Q—Iowa

■ 2. In § 52.820, the table in paragraph (e) is amended by adding the entry ''(48) Sections 110(a)(1) and (2) Infrastructure Requirements 2010 Sulfur Dioxide NAAQS'' in numerical order to read as follows:

§ 52.820 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IOWA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(48) Sections 110(a)(1) and (2) Infrastructure Requirements 2010 Sulfur Dioxide NAAQS.	Statewide	7/23/13	9/29/17, [insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A),(B),(C), (D)(i)(II) prong 3, and (D)(ii), (E),(F),(G),(H),(J),(K),(L), and (M). 110(a)(2)(I) is not applicable. [EPA–R07–OAR–2017–0267; FRL–9968–62–Region 7].

[FR Doc. 2017–20964 Filed 9–28–17; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2015–0498; FRL–9968–64–Region 2]

Approval and Promulgation of Implementation Plans; New York; Regional Haze Five-Year Progress Report State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving New York's regional haze progress report, submitted on June 16, 2015, as a revision to its State Implementation Plan (SIP). New York's SIP revision addresses requirements of the Clean Air Act and the EPA's rules that require each state to submit periodic reports describing progress towards reasonable progress goals established for regional haze and a determination of the adequacy of the state's existing regional haze SIP. The EPA is approving New York's determination that the State's regional haze SIP is adequate to meet these reasonable progress goals for the first implementation period which extends through 2018.

DATES: This rule is effective on October 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2015–0498. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* 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 through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–3381 or *wieber.kirk@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the Regional Haze Rule,[1] each state was required to submit its first implementation plan addressing regional haze visibility impairment to the EPA no later than December 17, 2007. *See* 40 CFR 51.308(b). New York submitted its regional haze plan on March 15, 2010. On August 28, 2012, the EPA approved New York's regional haze SIP submittal addressing the requirements of the first implementation period for regional haze. 77 FR 51915 (Aug. 28, 2012).

Each state is also required to submit a progress report, in the form of a SIP revision that evaluates progress towards the reasonable progress goals (RPGs) for each mandatory Class I Federal area within the state and for each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). Each state is also required to submit, at the same time as the progress report, a determination of the adequacy of its existing regional haze SIP. *See* 40 CFR 51.308(h). The first progress report was due five years after submittal of the initial regional haze SIP.

On June 16, 2015, New York submitted to the EPA, as a revision to its SIP, a report on progress made towards the RPGs for Class I areas outside the State that are affected by emissions from sources within the State. There are no Class I areas in New York State. In its progress report SIP, New York concludes the elements and strategies relied on in its original regional haze SIP are sufficient for neighboring states affected by emissions from New York to meet all established RPGs. In a notice of proposed rulemaking (NPRM) published on August 1, 2017 (82 FR 35738), the EPA proposed to approve New York's progress report as satisfying the requirements of 40 CFR 51.308(g) and 51.308(h). No comments were received on the August 1, 2017 proposed rulemaking.

II. Final Action

EPA is finalizing approval of New York's Regional Haze Progress Report SIP revision, submitted by New York on June 16, 2015, as meeting the requirements of 40 CFR 51.308(g) and 51.308(h).

III. Statutory and Executive Order Reviews

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

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

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

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

[1] 40 CFR part 51, subpart P.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 28, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: September 19, 2017.

Catherine R. McCabe,

Acting Regional Administrator, Region 2.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart HH—New York

■ 2. In § 52.1670(e) the table titled ''EPA APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS'' is amended by adding the entry ''Regional Haze Five-Year Progress Report'' at the end of the table to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
* *	*	*	* *	*
Regional Haze Five-Year Progress Report.	State-wide	June 16, 2015	September 29, 2017; [Insert **Federal Register** page citation].	

[FR Doc. 2017–20823 Filed 9–28–17; 8:45 am]

BILLING CODE 6560–50–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1601

[Agency Docket Number CSB 17–1]

Freedom of Information Act Program

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Interim final rule.

SUMMARY: This interim final rule revises the Chemical Safety and Hazard Investigation Board's (CSB) Freedom of Information Act (FOIA) rule. The purpose of this revision is to ensure consistency with the FOIA Improvement Act of 2016 and to update certain other provisions of the CSB's current rule. This interim final rule supersedes all previous CSB rules and guidance that supplement and implement the CSB FOIA Program.

DATES:

Effective date: This rule is effective September 29, 2017.

Comment date: Comments must be received by October 30, 2017.

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

(a) *Email to: kara.wenzel@csb.gov.* In the subject line of the message include ''Comment—Interim Final FOIA Rule.''

(b) *Fax:* 202–261–7650, attention: Kara Wenzel, Acting General Counsel, Chemical Safety and Hazard Investigation Board.

(c) *Mail to:* Kara Wenzel, Acting General Counsel, Chemical Safety and Hazard Investigation Board, 1750 Pennsylvania Ave. NW., Suite 910, Washington, DC 20006.

(d) *Hand Delivery/Courier:* Kara Wenzel, Acting General Counsel, Chemical Safety and Hazard Investigation Board, 1750 Pennsylvania Ave. NW., Suite 910, Washington, DC 20006.

Instructions: All submissions must include the title ''Interim Final FOIA Rule'' and the agency docket number for this rulemaking, CSB 17–1. The CSB will post all comments received by the due date to the CSB's Web site, *http://www.csb.gov/,* including any personal information provided. For additional details on submitting comments, see ''Public Participation'' in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket information: For access to the docket to read a compilation of all comments submitted, please visit *http://www.csb.gov/* after the final date for submission of comments.

FOR FURTHER INFORMATION CONTACT: Kara Wenzel, Acting General Counsel, 202–261–7600, or *kara.wenzel@csb.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

The FOIA, 5 U.S.C. 552, establishes basic procedures for public access to agency records. The FOIA requires federal agencies to issue regulations to establish procedures to implement the FOIA. The CSB's current FOIA rule is codified at 40 CFR part 1601.

This interim rule revises 40 CFR part 1601 to implement provisions of the FOIA Improvement Act of 2016 and to make additional legal updates. Specifically, this interim rule implements changes to conform to the requirements of the following amendments to the FOIA since the adoption of the CSB's current FOIA rule: The OPEN Government Act of 2007, Public Law 110–175, the OPEN FOIA Act of 2009, Public Law 111–83, and the FOIA Improvement Act of 2016, Public Law 114–185.

For example, the FOIA Improvement Act of 2016 introduced several changes to current law, including, but not

limited to the following: An increase in the minimum time for an administrative appeal to ninety (90) day; increased opportunities for dispute resolution services at various times throughout the FOIA process; waiver of fees if agencies do not meet mandated time limits; proactive disclosure of records of general interest to the public that are appropriate for such disclosure; and application of the Department of Justice's ''foreseeable harm'' standard as the basis for withholding information pursuant to a FOIA exemption, 5 U.S.C. 552(a)(8)(A)(i)(I).

Public Participation

The CSB is issuing an interim final rule to revise its current FOIA regulation because these changes are required by statutory amendments to FOIA since the adoption of the CSB's original FOIA rule in 2000. By issuing an interim final rule, these regulatory changes will take effect sooner than would be possible with the publication of a Notice of Proposed Rulemaking. Even though the CSB has issued an interim final rule, the CSB welcomes public comments from interested persons regarding any aspect of the changes made by this interim final rule. Please refer to the **ADDRESSES** section above for guidance on submitting comments. The CSB will consider all public comments in drafting the final rule.

All comments must be submitted in English, or if not, accompanied by an English translation.

Please note that all comments received are considered part of the public record and will be made available for public inspection online at *http://www.csb.gov/disclaimers/legal-affairs-foia.* Posted information made available on the CSB Web site will include personal identifying information (such as name and address) voluntarily submitted by the commenter, unless the CSB receives a specific request as described below to withhold such information.

If you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted. If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify any confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.csb.gov/.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's records, but not posted online.

The CSB reserves the right, but has no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.csb.gov/* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the rulemaking record and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

Regulatory Procedures

Administrative Procedure Act (5 U.S.C. Ch. 5)

The CSB's implementation of this rule as an interim final rule, with provision for post-promulgation public comment, is based on section 553(b) of the Administrative Procedure Act. 5 U.S.C. 553(b). Under section 553(b), an agency may issue a rule without notice of proposed rulemaking and the pre-promulgation opportunity for public comment, with regard to ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' The CSB has determined that many of the revisions are to interpretive rules issued by the CSB, as they merely advise the public of the CSB's implementation of recent amendments to the FOIA. Moreover, the CSB has determined that the remaining revisions are rules of agency procedure or practice, as they do not change the substantive standards the agency applies in implementing the FOIA. The CSB has also concluded that there is good cause to find that a pre-publication public comment period is unnecessary. These revisions to the existing regulations in 40 CFR part 1601 merely implement statutory changes, align the CSB's regulations with controlling judicial decisions, and clarify agency procedures.

Unfunded Mandates Reform Act (2 U.S.C. Ch. 25)

This interim final rule is not subject to the Unfunded Mandates Reform Act because it does not contain a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000.00 or more in any one year. Nor will it have a significant or unique effect on small governments.

Regulatory Flexibility Act (5 U.S.C. Ch. 6)

This interim final rule is not subject to the Regulatory Flexibility Act. The CSB has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The rule implements the procedures for processing FOIA requests within the CSB. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for the requesters. Thus, fees accessed by CSB will be nominal. Further, the ''small entities'' that make FOIA requests, as compared with individual and other requesters, are relatively few in number.

Paperwork Reduction Act (44 U.S.C. Ch. 35)

This interim final rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The Paperwork Reduction Act imposes certain requirements on Federal agencies in connection with the conducting or sponsoring of any collection of information. This interim rule does not contain any new collection of information requirement within the meaning of the Act.

Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Ch. 6)

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000.00 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

National Environmental Policy Act of 1969 (5 U.S.C. 804)

This interim final rule will not have significant effect on the human environment. Accordingly, this rule is categorically excluded from environmental analysis under 43 CFR 46.210(i).

E-Government Act of 2002 (44 U.S.C. 3504)

Section 206 of the E-Government Act requires agencies, to the extent practicable, to ensure that all information about that agency required to be published in the **Federal Register** is also published on a publicly accessible Web site. All information about the CSB required to be published in the **Federal Register** may be accessed at *http://www.csb.gov/.* This Act also requires agencies to accept public comments ''by electronic means.'' See the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document, for directions on the electronic submission of public comments on this interim final rule.

Finally, the E-Government Act requires, to the extent practicable, that agencies ensure that a publicly accessible Federal Government Web site contains electronic dockets for rulemakings under the Administrative Procedure Act of 1946 (5 U.S.C. 551 *et seq.*). Under this Act, an electronic docket consists of all submissions under section 553(c) of title 5, United States Code; and all other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically. The Web site *http://www.csb.gov/* will contain an electronic dockets for this rulemaking.

Plain Writing Act of 2010 (5 U.S.C. 301)

Under this Act, the term ''plain writing'' means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience. To ensure that this rulemaking has been written in plain and clear language so that it can be used and understood by the public, the CSB has modeled the language of this interim final rule on the Federal Plain Language Guidelines.

List of Subjects in 40 CFR Part 1601

Administrative practice and procedure, Archives and records, Confidential business information, Freedom of information, Privacy.

For the reasons stated in the preamble, the CSB revises 40 CFR part 1601 to read as follows:

PART 1601—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Subpart A—Purpose, Scope, and Applicability

Sec.

Subpart B—Procedures for Requesting and Disclosing Records

Subpart C—Appeals

Subpart D—Administration

Subpart E—Fees

Authority: 5 U.S.C. 552.

Subpart A—Purpose, Scope, and Applicability

§ 1601.1 Purpose and scope.

(a) *In general.* This part contains the Chemical Safety and Hazard Investigation Board (''CSB'' or ''agency'') regulations implementing the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. These regulations provide the procedures by which members of the public may obtain access to records compiled, created, and maintained by the CSB, along with the CSB procedures for responding to such requests. The rules in this subpart are to be read in conjunction with the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the White House Office of Management and Budget (OMB Guidelines).

(b) *Definitions.*

(1) *Chairperson* means the Chairperson of the CSB.

(2) *Chief FOIA Officer* means the person designated by Chairperson who has overall responsibility for the CSB's compliance with the FOIA.

(3) *FOIA Officer* means a person designated by the Chief FOIA Officer to process requests for the CSB documents under the FOIA.

(4) *Record* means information regardless of its physical form or characteristics including information created, stored, and retrievable by electronic means that is created or obtained by the CSB and under the control of the CSB at the time of the request, including information maintained for the CSB by an entity under Government contract for records management purposes. *Record* includes any writing, drawing, map, recording, tape, film, photo, or other documentary material by which information is preserved.

(5) *Requester* means any person, including an individual, Indian tribe, partnership, corporation, association, or public or private organization other than a Federal agency that requests access to records in the possession of the CSB pursuant to 5 U.S.C. 552.

§ 1601.2 Applicability.

(a) *In general.* The FOIA and the regulations in this part apply to all CSB documents and information. However, if another law sets specific procedures for disclosure that supersede the FOIA, then CSB must process a request in accordance with the procedures that apply to those specific documents. If a request is received for disclosure of a document to the public that is not required to be released under the provisions of law other than the FOIA, then the CSB must consider the request under the FOIA and the regulations in this part. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with CSB's Privacy Act regulations (part 1602 of this chapter), as well as under this subpart.

(b) *Disclosure of requested records.* The CSB will only withhold information under the FOIA if the agency reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law. The FOIA Officer will make requested records available to the public to the greatest extent possible in keeping with the FOIA, except for the following types of records, which are exempt from the disclosure requirements:

(1) Records specifically authorized under criteria established by an Executive Order (E.O.) to be kept secret in the interest of national defense or foreign policy and which are, in fact, properly classified pursuant to such E.O.;

(2) Records related solely to the internal personnel rules and practices of the CSB;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)) provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or that the statute establishes particular criteria for withholding information or refers to

particular types of matters to be withheld; and if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to 5 U.S.C. 552(b)(3);

(4) Records containing trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the CSB, provided that the deliberative process privilege shall not apply to records created twenty-five (25) years or more before the date on which the records were requested;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Records contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Geological or geophysical information and data, including maps, concerning wells.

(c) *Disclosure of segregable nonexempt material.* The CSB will consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible. If a requested record contains exempted material along with nonexempted material, all reasonably segregable nonexempt material must be disclosed.

(d) *Records available through routine distribution procedures.* If the record requested includes material published and offered for sale, *e.g.,* by the Superintendent of Documents of the Government Printing Office, or by an authorized private distributor, then the CSB will refer the requester to those sources. Nevertheless, if the requester is not satisfied with the alternative sources, then the CSB will process the request under its usual FOIA procedures, noting that the CSB will likely withhold copyrighted records under Exemption 4.

Subpart B—Procedures for Requesting and Disclosing Records

§ 1601.10 Proactive disclosures.

(a) *In general.* Records that the FOIA requires the CSB to make available for public inspection in an electronic format may be accessed through the CSB's Web site (which can be found at *http://www.csb.gov/disclaimers/legal-affairs-foia/*). The CSB is responsible for determining which of its records must be made publicly available, for identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. The CSB must ensure that its Web site of posted records and indices is reviewed and updated on an ongoing basis. The CSB has a FOIA Contact and FOIA Public Liaison who can assist individuals in locating records particular to the CSB. The most up to date contact information for the CSB's FOIA Contact and the CSB's FOIA Public Liaison is available at *http://www.foia.gov/report-makerequest.html.*

(b) *Definitions.*

(1) *Disclose or disclosure* means making records available for examination or copying, or furnishing a copy of nonexempt responsive records.

(2) *FOIA Contact* means the name, address and phone number at the CSB where a requester can make a FOIA request.

(3) *FOIA Public Liaison* means the official who supervises the FOIA Requester Service Center.

§ 1601.11 Requirements for making requests.

(a) *General information.* (1) To make a request for records, a requester should write directly to the FOIA office of the agency that maintains the records sought. A request will receive the quickest possible response if the request is addressed to the FOIA office of the agency that maintains the records sought. If the CSB is the agency that maintains the records sought, then the contact information for the CSB's FOIA office is listed at *http://www.foia.gov/report-makerequest.html,* and any additional requirements for submitting a request can be found herein. Additionally, requesters who have questions or concerns about making a request, and those who have made a request who have questions or concerns, may discuss their request(s) with the CSB's FOIA Contact or FOIA Public Liaison.

(2) A requester who is making a request for records about himself or herself must comply with the verification of identity requirements described in this section. Requesters must provide either a notarized statement or a statement signed under penalty of perjury stating that the requester is the person they claim to be. This certification is required in order to protect the requester's privacy and to ensure that private information about the requester is not disclosed inappropriately to another individual.

(3) Where a request for records pertains to a third party, 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 (*e.g.,* a copy of a death certificate or an obituary). As an exercise of administrative discretion, the CSB can require a requester to supply additional information, if necessary, in order to verify that a particular individual has consented to disclosure.

(b) *Addressing requests.* (1) All requests for records to the CSB must be made in writing.

(2) *For hard copy requests:* The envelope and the request both should be clearly marked ''FOIA Request'' and addressed to: Chief FOIA Officer—FOIA Request, Chemical Safety and Hazard Investigation Board, 1750 Pennsylvania Ave. NW., Suite 910, Washington, DC 20006.

(3) *For electronic requests:* The subject line of the request should be marked ''FOIA Request'' and the request may be submitted by email to *foia@csb.gov.*

(4) A request that is improperly addressed will be deemed to have been

received by the CSB on the date that it is actually received by the CSB, or would have been received with the exercise of due diligence, by the FOIA Officer.

(c) *Description of records sought.* (1) Requesters must describe the records sought in sufficient detail to enable the CSB's personnel to locate them with a reasonable amount of effort.

(2) To the extent possible, requesters should include specific information that may help the CSB 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. In general, requesters should include as much detail as possible about the specific records or the types of records that they are seeking. Before submitting their requests, requesters may contact the CSB's FOIA Contact or FOIA Public Liaison to discuss the records they seek and to receive assistance in describing the records.

(3) If, after receiving a request, the CSB determines that the request does not reasonably describe the records sought, then the CSB 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 CSB's FOIA Contact or with the CSB's FOIA Public Liaison. If a request does not reasonably describe the records sought, the CSB's response to the request may be delayed.

(d) *Form of records.* Requests may specify the preferred form or format (including electronic formats) for the records that the requester seeks. The CSB must accommodate requests if the record is readily reproducible in that form or format. If a person seeks information from the CSB in a format that does not currently exist, then the CSB must make reasonable efforts to provide the information in the format requested. The CSB will not create a new record of information to satisfy a request.

(e) *Contact information.* Requesters must provide their first and last name along with their contact information, such as their phone number, email address, and/or mailing address, to assist the CSB in communicating with them and providing released records.

(f) *Agreement to pay fees.* The CSB considers a FOIA request an agreement by the requester to pay all applicable fees charged unless the requester seeks a waiver of fees. The CSB ordinarily will confirm this agreement in an acknowledgement letter. The CSB will not charge any fee if the total cost of the response is less than $25.00. See § 1601.40 [discussing fees in more detail]. If the fee will be greater than $25.00, then the CSB must contact the requester to discuss how the requester wants to proceed.

(g) *Types of records not available.* The FOIA does not require the CSB to:

(1) Compile or create records solely for the purpose of satisfying a request for records;

(2) Provide records not yet in existence, even if such records may be expected to come into existence at some future time; or

(3) Restore records destroyed or otherwise disposed of, except that the FOIA Officer must notify the requester that the requested records have been destroyed or otherwise disposed of.

§ 1601.12 Responsibility for responding to requests.

(a) *In general.* The agency that first receives a request for a record and maintains that record is the agency responsible for responding to the request. In determining which records are responsive to a request, the CSB ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the CSB must inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), is not considered responsive to a request.

(b) *Authority to grant or deny requests.* The Chief FOIA Officer or a designee is authorized to grant or to deny any initial request for records that are maintained by the CSB and to determine any appropriate fees.

(c) *Consultation, referral, and coordination.* When reviewing records, the CSB must determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the CSB must proceed in one of the following ways:

(1) *Consultation.* When records originated with the CSB, but contain within them information of interest to another agency or other Federal Government office, the CSB should consult with that other entity prior to making a release determination.

(2) *Referral.* (i) When the CSB believes that a different agency or component of a different agency is best able to determine whether to disclose the record, the CSB should refer the responsibility for responding to the request regarding that record to that agency or component. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. However, if the CSB and the originating agency jointly agree that the CSB is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the CSB refers any part of the responsibility for responding to a request to another agency, it must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the CSB must coordinate with the originating agency to seek its views on whether the record can be disclosed. The release determination for the record that is the subject of the coordination will then be conveyed to the requester by the CSB.

(d) *Classified information.* Upon receipt of any request involving classified information, the CSB must determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable E.O. concerning the classification of records, the CSB must refer the responsibility for responding to the request regarding that information to the agency that classified the information,

or to the agency that should consider the information for classification. Whenever the CSB's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), the CSB must refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals received by the CSB must be handled according to the date that the first agency received the perfected FOIA request.

(f) *Agreements regarding consultations and referrals.* The CSB may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

(g) *No responsive record.* If no records are responsive to the request, the FOIA Officer will so notify the requester in writing.

§ 1601.13 Timing of responses to requests.

(a) *In general.* The CSB ordinarily will respond to requests according to their order of receipt.

(b) *Definitions.*

(1) *Working day* means a Federal workday; Saturdays, Sundays, and Federal holidays are excluded in computing the response time for processing FOIA requests.

(2) [Reserved]

(c) *Multitrack processing.* The CSB has a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (f) of this section. In addition, the CSB uses two standard processing tracks- one for simple requests and a separate track for complex requests. The CSB will assign requests to the simple or complex track based on the estimated amount of work or time needed to process the request. Among the factors the CSB may consider are the number of records requested, the number of pages involved in processing the request and the need for consultations or referrals. The CSB must advise each requester of the track into which their request falls and, when appropriate, will offer a requester an opportunity to narrow or modify their request so that it can be placed in the simple processing track.

(d) *Unusual circumstances.* Whenever the CSB cannot meet the statutory time limit for processing a request because of ''unusual circumstances,'' as defined in the FOIA, and the CSB extends the time limit on that basis, the CSB must, before expiration of the twenty (20) day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which the CSB estimates processing of the request will be completed. Where the extension exceeds ten (10) working days, the CSB must, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. The CSB must make available its designated FOIA Contact or its FOIA Public Liaison for this purpose. A list of agency FOIA Public Liaisons is available at *http://www.foia.gov/report-makerequest.html.* The CSB must also alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services.

(e) *Aggregating requests.* To satisfy unusual circumstances under the FOIA, the CSB may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. The CSB must not aggregate multiple requests that involve unrelated matters.

(f) *Expedited processing.* (1) The CSB must process requests and appeals on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity that affect public confidence.

(2) A request for expedited processing may be made at any time. Requests based on paragraphs (f)(1)(i) through (iv) of this section must be submitted to the CSB. When making a request for expedited processing of an administrative appeal, the request must be submitted to the CSB's FOIA Appeals Officer in accordance with § 1601.20.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (f)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ''urgency to inform'' the public on the topic. As a matter of administrative discretion, the CSB may waive the formal certification requirement.

(4) The CSB must notify the requester within ten (10) calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, then the request must be given priority, placed in the processing track for expedited requests, and must be processed as soon as practicable. If a request for expedited processing is denied, then the CSB must act on any appeal of that decision expeditiously.

§ 1601.14 Responses to requests.

(a) *In general.* The CSB, to the extent practicable, will communicate electronically with requesters having access to the Internet, such as by email or web portal.

(b) *Acknowledgments of requests.* The CSB must acknowledge the request in writing and assign it an individualized tracking number if it will take longer than ten (10) working days to process. The CSB must include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Estimated dates of completion and interim responses.* Upon request, the CSB must provide an estimated date by which the CSB expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the CSB may provide interim responses, releasing the records on a rolling basis.

(d) *Grants of requests.* Once the CSB determines it will grant a request in full or in part, it must notify the requester in writing. The notice must describe the manner in which the record or records will be disclosed, whether by providing a copy of the record or records with the response, or providing them at a later date, or by making a copy of the record available to the requester for inspection

at a reasonable time and place. The procedure for such an inspection must not unreasonably disrupt the operation of the CSB. The CSB must also inform the requester of any fees charged under § 1601.40 and must disclose the requested records to the requester promptly upon payment of any applicable fees. The CSB must inform the requester of the availability of its FOIA Public Liaison to offer assistance.

(e) *Adverse determinations of requests.* If the CSB makes an adverse determination denying a request in any respect, it must notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: The requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(f) *Content of denial.* The denial must be signed by the Chairperson or the FOIA Officer and must include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption(s) applied by the CSB in denying the request;

(3) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under § 1601.20, and a description of the appeal requirements.

(5) A statement notifying the requester of the assistance available from the CSB's FOIA Public Liaison and the dispute resolution services offered by the OGIS.

(g) *Markings on released documents.* Records disclosed in part must be marked clearly to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted must also be indicated on the record, if technically feasible.

(h) *Use of record exclusions.* (1) In the event that the CSB identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the CSB must confer with Department of Justice, Office of Information Policy (OIP), to obtain approval to apply the exclusion.

(2) When invoking an exclusion, the CSB must maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

§ 1601.15 Special procedures for confidential commercial information.

(a) *In general.* Confidential commercial information provided to the CSB by a submitter must not be disclosed pursuant to a FOIA request except in accordance with this section.

(b) *Definitions.*

(1) *Confidential commercial information* means commercial or financial information obtained by the CSB from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, Indian tribal governments but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly to the Federal Government.

(c) *Designation of confidential commercial information.* A submitter of confidential commercial information must make good faith efforts to designate by appropriate markings, at the time of submission, any portion of its submission that it considers to be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). These designations expire ten (10) years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(d) *When notice to submitters is required.* (1) The CSB must promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if the CSB determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The CSB has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure.

(2) The notice must either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, the CSB may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

(e) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) The CSB determines that the information is exempt under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of E.O. 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous. In such case, the CSB must give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

(f) *Opportunity to object to disclosure.* (1) The CSB must specify a reasonable time period within which the submitter must respond to the notice referenced above.

(2) If a submitter has any objections to disclosure, it should provide the CSB a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential. Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(3) A submitter who fails to respond within the time period specified in the notice will be considered to have no objection to disclosure of the information. The CSB is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter

under this subpart may itself be subject to disclosure under the FOIA.

(g) *Analysis of objections.* The CSB must consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(h) *Notice of intent to disclose.* Whenever the CSB decides to disclose information over the objection of a submitter, the CSB must provide the submitter written notice, which must include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed or copies of the records as the CSB intends to release them; and

(3) A specified disclosure date, which must be a reasonable time after the notice.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the CSB must promptly notify the submitter.

(j) *Requester notification.* The CSB must notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure because the request includes information that may arguably be exempt from disclosure under Exemption 4 of the FOIA; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

Subpart C—Appeals

§ 1601.20 Processing of appeals.

(a) *Right of appeal.* If a request has been denied in whole or in part, the requester may appeal the denial to the CSB's FOIA Appeals Officer.

(b) *Definitions.*

(1) *FOIA Appeal* means an independent review of an adverse determination initial determination made in response to a FOIA request.

(2) *FOIA Appeals Officer* means the person designated by the Chairperson to process and to decide a FOIA appeal.

(c) *Requirements for making an appeal.* (1) A requester may appeal any adverse determinations to the FOIA Appeals Officer. Examples of adverse determinations are provided in § 1601.14(e).

(2) The requester must make the appeal in writing. Requesters can submit appeals by mail or email in accordance with the following requirements herein, which are also listed on the CSB's Web site. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, ''Freedom of Information Act Appeal'' or ''FOIA Appeal.''

(i) For hard copy requests: The envelope and the request both should addressed to: FOIA Appeals Officer—FOIA Appeal, Chemical Safety and Hazard Investigation Board, 1750 Pennsylvania Ave. NW., Suite 910, Washington, DC 20006.

(ii) For electronic requests: The appeal should addressed to the FOIA Appeals Officer and may be submitted by email to *foiaappeals@csb.gov.*

(3) To be considered timely, an appeal must be postmarked, or in the case of electronic submissions, transmitted, within ninety (90) calendar days after the date of the adverse determination that is the subject of the appeal. For purposes of apply the ninety (90) calendar day deadline, the CSB will treat an appeal that is improperly addressed as being received on the date on the date that it is actually received by the CSB, or would have been received with the exercise of due diligence, by the FOIA Appeals Officer.

(4) The appeal should clearly identify the adverse determination that is being appealed and the assigned request number.

(5) An appeal should also include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons, or arguments advanced in support of disclosure of the requested record.

(d) *Adjudication of appeals.* (1) The CSB FOIA Appeals Officer or designee will act on behalf of the CSB's Chief FOIA Officer on all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the FOIA Appeals Officer must take appropriate action to ensure compliance with applicable classification rules.

(e) *Decisions on appeals.* The CSB must provide its decision on an appeal in writing. The disposition of an appeal will be in writing and will constitute the final action of the CSB on a request. A decision that upholds the CSB's determination in whole or in part will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will also inform the requester of the mediation services offered by the OGIS of the National Archives and Records Administration as a non-exclusive alternative to litigation. If the CSB's decision is remanded or modified on appeal, the CSB must notify the requester of that determination in writing. The CSB must then further process the request in accordance with that appeal determination and will respond directly to the requester.

(f) *Engaging in dispute resolution services provided by OGIS.* Dispute resolution is a voluntary process. If the CSB 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.

(g) *When appeal is required.* Before seeking review by a court of the CSB's adverse determination, a requester generally must first submit a timely administrative appeal.

Subpart D—Administration

§ 1601.30 Protection of records.

(a) *In general.* (1) Except as authorized by this part or as otherwise necessary in performing official duties, CSB employees must not disclose or permit disclosure of any document or information in the possession of the CSB that is confidential or otherwise of a nonpublic nature, including that regarding the CSB, the Environmental Protection Agency or the Occupational Safety and Health Administration.

(2) No person may, without permission, remove from the place where it is made available any record made available to him for inspection or copying. Stealing, altering, mutilating, obliterating, or destroying a Federal record, in whole or in part, is a violation of Federal law.

(b) [Reserved]

§ 1601.31 Preservation of records pertaining to requests under this part.

The CSB 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 and the General Records Schedule 4.2 of the National Archives and Records Administration. The CSB must not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 1601.32 Other rights and services.

Nothing in this subpart will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart E—Fees

§ 1601.40 Procedures for fees.

(a) *In general.* The CSB must charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. For purposes of assessing fees, the FOIA establishes three categories of requesters: Commercial use requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters. Different fees are assessed depending on the category. Requesters may seek a fee waiver. The CSB must consider requests for fee waivers in accordance with the requirements in paragraph (k) of this section. To resolve any fee issues that arise under this section, the CSB may contact a requester for additional information. The CSB must ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner. The CSB ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States, or by another method as determined by the CSB.

(b) *Definitions.*

(1) *Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The CSB's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information. The CSB must notify requesters of their placement in this category.

(2) *Direct costs* are those expenses that the CSB incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee, plus sixteen percent (16%) of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) *Duplication* is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others. The copies provided must be in a form that is reasonably usable by requesters.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with the requester's role at the educational institution. The CSB may seek verification from the requester that the request is in furtherance of scholarly research and the CSB must advise requesters of their placement in this category.

(i) *Example 1.* A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

(ii) *Example 2.* A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

(iii) *Example 3.* A student who makes a request in furtherance of the student's coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

(5) *Noncommercial scientific institution* is an institution that is not operated on a ''commercial'' basis, as defined in paragraph (b)(1) of this section and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use. The CSB must advise requesters of their placement in this category.

(6) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. Accordingly, the term includes any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large, and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public, including news organizations that make their products available for purchase by or subscription by or free distribution to the general public, including those solely on the Internet. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. *Freelance* journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the CSB can also consider a requester's past publication record in making this determination. The CSB will advise requesters of their placement in this category.

(7) *Review* is the examination of a record located in response to a FOIA request in order to determine whether any portion of it is exempt from disclosure under one or more of the FOIA exemptions. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 1601.15, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Charging fees.* In responding to FOIA requests, the CSB will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section. Because the fee amounts provided below already account for the direct costs associated with a given fee type, the CSB should

not add any additional costs to charges calculated under this section.

(1) *Search.* (i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. The CSB must charge search fees for all other requesters, subject to the restrictions of paragraph (d) of this section. The CSB may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be charged as follows: $6.00 for clerical personnel; $11.00 for professional personnel; and $15.00 for managerial personnel.

(iii) The CSB must charge the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. The CSB must notify the requester of the costs associated with creating such a program, and the requester must agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored by the CSB at a Federal records center operated by the National Archives and Records Administration (NARA), the CSB must charge additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* The CSB will charge duplication fees to all requesters, subject to the restrictions of paragraph (d) of this section. The CSB must honor a requester's preference for receiving a record in a particular form or format where the CSB can readily reproduce it in the form or format requested. Where photocopies are supplied, the CSB must provide one copy per request at the cost of $0.17 per page. For copies of records produced on tapes, disks, or other media, the CSB must charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester must also pay the direct costs associated with scanning those materials. For other forms of duplication, the CSB must charge the direct costs.

(3) *Review.* The CSB must charge review fees to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.,* the review conducted by the CSB to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with the CSB's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Restrictions on charging fees.* (1) When the CSB determines that a requester is an educational institution, non-commercial scientific institution, or representative of the news media, and the records are not sought for commercial use, it will not charge search fees.

(2)(i) If the CSB fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees, except as described in paragraphs (d)(2)(ii)–(iv).

(ii) If the CSB has determined that unusual circumstances as defined by the FOIA apply and the CSB provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit must be excused for an additional ten (10) days.

(iii) If the CSB has determined that unusual circumstances as defined by the FOIA apply, and more than 5,000 pages are necessary to respond to the request, the CSB may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees, if the following steps are taken. The CSB must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the CSB must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the CSB may charge all applicable fees incurred in the processing of the request.

(iv) If a court has determined that exceptional circumstances exist as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, the CSB must provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(5) No fee will be charged when the total fee, after deducting the 100 free pages (or its cost equivalent) and the first two hours of search, is equal to or less than $25.00.

(e) *Notice of anticipated fees in excess of $25.00.* (1) When the CSB determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, the CSB must notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the CSB must advise the requester accordingly. If the request is for non-commercial use, the notice will specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and will advise the requester whether those entitlements have been provided.

(2) If the CSB notifies the requester that the actual or estimated fees are in excess of $25.00, the request will not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a non-commercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. The CSB is not required to accept payments in installments. Requesters must respond to their fee estimate within thirty (30) working days, or the CSB will assume that the requester is no longer interested in their FOIA request(s), and the case will be administratively closed.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the CSB estimates that the total fee will exceed that amount, the CSB will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has

indicated a willingness to pay. The CSB will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The CSB must make available its FOIA Public Liaison or anther FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if the CSB chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* The CSB may charge interest on any unpaid bill starting on the thirty-first (31) day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the CSB. The CSB must follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* When the CSB reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the CSB may aggregate those requests and charge accordingly. The CSB may presume that multiple requests of this type made within a thirty (30) day period have been made in order to avoid fees. For requests separated by a longer period, the CSB must aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters cannot be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) or (i)(3) of this section, the CSB must not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.,* payment before copies are sent to a requester) is not an advance payment.

(2) When the CSB determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The CSB may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to the CSB within thirty (30) calendar days of the billing date, the CSB may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the CSB may require that the requester make an advance payment of the full amount of any anticipated fee before the CSB begins to process a new request or continues to process a pending request or any pending appeal. Where the CSB has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which the CSB requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within thirty (30) calendar days after the date of the CSB's fee determination, the request will be closed.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires the CSB to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the CSB must inform the requester of the contact information for that program.

(k) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) The CSB must furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In deciding whether this standard is satisfied the CSB must consider the factors described in paragraphs (k)(2)(i) through (iii) of this section:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered. The CSB will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the CSB must consider the following criteria:

(A) The CSB must identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, the CSB must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (k)(2)(i) and (ii) are satisfied and any commercial interest is not the primary

interest furthered by the request. The CSB ordinarily will presume that when a news media requester has satisfied the factors in paragraphs (k)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver must be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the CSB and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

Dated: September 25, 2017

Kara Wenzel,

Acting General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2017–20853 Filed 9–28–17; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 10

RIN 0906–AB11

340B Drug Pricing Program Ceiling Price and Manufacturer Civil Monetary Penalties Regulation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule; further delay of effective date.

SUMMARY: The Health Resources and Services Administration (HRSA) administers section 340B of the Public Health Service Act (PHSA), known as the ''340B Drug Pricing Program'' or the ''340B Program.'' HRSA published a final rule on January 5, 2017, that set forth the calculation of the ceiling price and application of civil monetary penalties. The final rule applied to all drug manufacturers that are required to make their drugs available to covered entities under the 340B Program. On August 21, 2017, HHS solicited comments on further delaying the effective date of the January 5, 2017, final rule to July 1, 2018 (82 FR 39553). HHS proposed this action to allow a more deliberate process of considering alternative and supplemental regulatory provisions and to allow for sufficient time for additional rulemaking. After consideration of the comments received on the proposed rule, HHS is delaying the effective date of the January 5, 2017, final rule, to July 1, 2018.

DATES: As of September 29, 2017, the effective date of the final rule published in the **Federal Register** (82 FR 1210, January 5, 2017) is further delayed to July 1, 2018.

FOR FURTHER INFORMATION CONTACT: CAPT Krista Pedley, Director, Office of Pharmacy Affairs, Healthcare Systems Bureau, HRSA, 5600 Fishers Lane, Mail Stop 08W05A, Rockville, MD 20857, or by telephone at 301–594–4353.

SUPPLEMENTARY INFORMATION:

I. Background

On September 30, 2010, HHS published an advanced notice of proposed rulemaking (ANPRM) in the **Federal Register**, ''340B Drug Pricing Program Manufacturer Civil Monetary Penalties'' (75 FR 57230, September 20, 2010). HHS subsequently published a notice of proposed rulemaking (NPRM) on June 17, 2015, to implement CMPs for manufacturers that knowingly and intentionally charge a covered entity more than the ceiling price for a covered outpatient drug; to provide clarity regarding the requirement that manufacturers calculate the 340B ceiling price on a quarterly basis; and to establish the requirement that a manufacturer charge $.01 (penny pricing) for drugs when the ceiling price calculation equals zero (80 FR 34583, June 17, 2015). The public comment period closed on August 17, 2015, and HRSA received 35 comments. After review of the initial comments, HHS reopened the comment period (81 FR 22960, April 19, 2016) to invite additional comments on the following areas of the NPRM: 340B ceiling price calculations that result in a ceiling price that equals zero (penny pricing); the methodology that manufacturers use when estimating the ceiling price for a new covered outpatient drug; and the definition of the ''knowing and intentional'' standard to be applied when assessing a CMP for manufacturers that overcharge a covered entity. The comment period closed May 19, 2016, and HHS received 72 comments.

On January 5, 2017, HHS published a final rule in the **Federal Register** (82 FR 1210, January 5, 2017); comments from both the original comment period established in the NPRM and the reopened comment period announced in the April 19, 2016 notice were considered in the development of the final rule. The provisions of that final rule were to be effective March 6, 2017; however, HHS issued a subsequent final rule (82 FR 12508, March 6, 2017) delaying the effective date to March 21, 2017, in accordance with a January 20, 2017, memorandum from the Assistant to the President and Chief of Staff, titled ''Regulatory Freeze Pending Review.'' [1] In the January 5, 2017, final rule, HHS acknowledged that the effective date fell during the middle of a quarter and stakeholders needed time to adjust systems and update their policies and procedures. As such, HHS stated that it intended to enforce the requirements of the final rule at the start of the next quarter, which began April 1, 2017.

After further consideration and to provide affected parties sufficient time to make needed changes to facilitate compliance, and because questions were raised, HHS issued an interim final rule (82 FR 14332, March 20, 2017), to delay the effective date of the final rule to May 22, 2017, and solicited additional comments on whether that date should be further extended to October 1, 2017. HHS received 51 comments on the interim final rule, some supporting and some opposing the delay of the effective date to May 22, 2017, or alternatively to October 1, 2017. After careful consideration of the comments received, HHS delayed the effective date of the January 5, 2017, final rule to October 1, 2017 (82 FR 22893, May 19, 2017).

HHS subsequently published a proposed rule (82 FR 39553, August 21, 2017) to further delay the effective date of the final rule to July 1, 2018. The further delay allows necessary time to fully consider the substantial questions of fact, law, and policy raised by the rule, consistent with the aforementioned ''Regulatory Freeze Pending Review,'' memorandum. Requiring manufacturers to make targeted and potentially costly changes to pricing systems and business procedures in order to comply with a rule that is under further consideration and for which substantive questions have been raised would be disruptive. The further delay allows HHS to consider objections regarding the timing of the effective date and challenges associated with complying with the rule, as well as other objections to the rule.

In addition, Executive Order 13765 (82 FR 8351) titled, ''Minimizing the

[1] See: *https://www.whitehouse.gov/the-press-office/2017/01/20/memorandum-heads-executive-departments-and-agencies.*

Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal,'' specifically instructs HHS and all other heads of executive offices to utilize all authority and discretion available to delay the implementation of certain provisions or requirements of the Patient Protection and Affordable Care Act.[2] HHS based the January 5, 2017, final rule on changes made to the 340B Program by the Patient Protection and Affordable Care Act. HHS proposed to delay the effective date of the January 5, 2017, final rule to July 1, 2018, to allow for a sufficient amount of time to consider the regulatory burdens that may be posed by this final rule. HHS continues to examine important substantive issues in matters covered by the rule and intends to engage in additional rulemaking on these issues.

HHS received a number of comments on the proposed rule both supporting and opposing the delay of the effective date to July 1, 2018. After careful consideration of the comments received, HHS has decided to delay the effective date of the January 5, 2017, final rule to July 1, 2018. As HHS changed the effective date of the final rule to July 1, 2018, enforcement will be delayed to July 1, 2018. HHS continues to believe that the delay of the effective date provides regulated entities sufficient time to implement the requirements of the rule, as well as allowing a more deliberate process of considering alternative and supplemental regulatory provisions, and to allow for sufficient time for additional rulemaking.

Section 553(d) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) requires that Federal agencies provide at least 30 days after publication of a final rule in the **Federal Register** before making it effective, unless good cause can be found not to do so. HHS finds good cause for making this final rule effective less than 30 days after publication in the **Federal Register** given that failure to do so would result in the final rule published on January 5, 2017, going into effect on October 1, 2017, for several weeks before a final rule delaying the effective date until July 1, 2018, would go into effect. To preclude this uncertainty in the marketplace and to ease the burdens of stakeholders, HHS believes that a clear effective date is an important goal and one that becomes particularly important when it is paired with potential civil monetary penalties. The additional time provided to the public before the rule takes effect will assist stakeholders in preparing to comply with these new program requirements.

II. Analysis and Responses to Public Comments

In the proposed rule, HHS solicited comments regarding whether we should delay the January 5, 2017, final rule to July 1, 2018. We received 97 comments containing a number of issues from covered entities, manufacturers, and groups representing these stakeholders. In this final rule, we will only respond to comments related to whether HHS should delay the January 5, 2017, final rule to July 1, 2018. We did not consider and do not address comments that raised issues beyond the narrow scope of the proposed rule, including comments related to withdrawal of the rule or comments related to broader policy matters. However, HHS intends to engage in further rulemaking on issues covered in the January 5, 2017, final rule. We have summarized the relevant comments received and provided our responses below.

Comment: Some commenters supported HHS's proposed delay of the effective date of the final rule until not only July 1, 2018, but until HHS fulfills its commitment to engage in additional rulemaking that cures the substantive legal and practical concerns with the final rule. These commenters recommend that HRSA tie the further delay of the effective date of the final rule to the completion of such rulemaking, as opposed to a certain date.

Response: HHS has decided to delay the effective date to July 1, 2018, to provide affected parties sufficient time to make needed changes to facilitate compliance and because HHS continues to examine important substantive issues arising from the January 5, 2017, final rule. After reviewing the comments received from stakeholders regarding objections on the timing of the effective date and challenges associated with complying with the final rule, HHS has determined that delaying the effective date to July 1, 2018, is necessary to consider some of the issues raised. HHS believes that delaying the effective date to July 1, 2018, provides sufficient time to address these issues and does not believe a further delay is necessary at this time.

Comment: Some commenters stated that the January 5, 2017, final rule contains several policies that are inconsistent with the 340B statute and imposes needless burdens on manufacturers. These commenters urge HHS to delay the effective date to July 1, 2018, and use the additional time to reconsider the policies included in the final rule.

Responses: HHS intends to engage in further rulemaking and believes that this delay will provide HHS with time to consider the substantial questions of fact, law, and policy raised by the rule.

Comment: Several commenters explained that a delay in the effective date of the final rule is also necessary to align with the Administration priorities of analyzing final, but not yet effective, regulations, and removing or minimizing unwarranted economic and regulatory burdens related to the Affordable Care Act, the law that added the provisions of the 340B statute that are the subject of the final rule.

Response: HHS agrees with the commenters. Executive Order 13765 instructs agencies to use discretion to delay the implementation of certain provisions of requirements of the Patient Protection and Affordable Care Act. As previously mentioned, HHS based the January 5, 2017, final rule on changes made to the 340B Program by the Patient Protection and Affordable Care Act. As such, HHS is complying with Executive Order 13765 to delay implementation on provisions of that law that ''. . . impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.'' The policies finalized in the January 5, 2017, final rule will require targeted and potentially costly changes to pricing systems and business procedures for manufacturers affected by the rule. Thus, HHS is delaying the effective date to July 1, 2018.

Comment: Some commenters recommend that HHS delay the effective date of the final rule until HHS concurrently addresses 340B covered entity compliance obligations and penalties under the 340B statute, which is necessary to strengthen the integrity of the 340B Program.

Response: HHS plans to issue separate policy documents for the different areas of the 340B program integrity provisions in the 340B statute and disagrees with the commenters advising HHS to address these issues concurrently.

Comment: Many commenters opposed delaying the effective date to July 1, 2018. Commenters recommended that HHS use its statutory rulemaking authority to balance the scales of enforcement and oversight in the 340B Program, and expressed concern that drug manufacturers have engaged in discriminatory pricing strategies due to

[2] See: *https://www.whitehouse.gov/the-press-office/2017/01/2/executive-order-minimizing-economic-burden-patient-protection-and.*

a lack of oversight and enforcement with respect to manufacturer behavior. They explained that various factors, including extensive data regarding overcharging covered entities, HHS's inability to address overcharges, and HHS's admission that many manufacturers are still out of compliance highlight the need for the final rule to go into effect immediately. They further explained that the January 5, 2017, final rule is critical to ensuring that drug manufacturers uphold the intent of the 340B Program. The commenters also disagreed that ''a more deliberative process is needed'' as there have been multiple delays and stakeholders were given various opportunities to comment.

Response: HHS does not agree that that we should enforce the final rule immediately. We are delaying the effective date of the January 5, 2017, final rule to July 1, 2018, because the delay will provide stakeholders with additional time to come into compliance and provide time to consider the substantial questions of fact, law, and policy raised by the rule. The final rule does not represent the only method for HHS to address manufacturer overcharges. In addition to the final rule, HHS performs audits of manufacturers, investigates all allegations of overcharging, and participates in settlements that have returned millions of dollars to covered entities. HHS believes that it would be disruptive to require stakeholders to make potentially costly changes to pricing systems and business procedures in order to comply with a rule that is under further consideration and for which substantive questions have been raised.

While stakeholders had the opportunity to provide comments on the final rule, the 340B Program is a complex program that is affected by changes in other areas of health care. HHS has determined that this complexity and changing environment warrants further review of the final rule.

Comment: Many commenters supported further delaying the effective date to July 1, 2018, at a minimum, and agreed with HHS that more time was needed for stakeholders to come into compliance and to consider substantial questions of fact, law and policy raised by the January 5, 2017, final rule.

Response: HHS agrees with the commenters and will delay the effective date of the January 5, 2017, final rule to July 1, 2018.

III. Regulatory Impact Analysis

HHS examined the effects of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 8, 2011), the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act, and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866, 13563 and 13771

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). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year), and a ''significant'' regulatory action is subject to review by the Office of Management and Budget (OMB) and is therefore, not a major rule under the Congressional Review Act.

HHS does not believe that a delay of the effective date of the January 5, 2017, final rule will have an economic impact of $100 million or more, and is, therefore, not designated as an ''economically significant'' rule under section 3(f)(1) of the Executive Order 12866. Therefore, the economic impact of having no rule in place related to the policies addressed in the final rule is believed to be minimal, as the policies would not yet be required or enforceable.

Executive Order 13771, titled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017. This final rule is not expected to be an EO 13771 regulatory action because this final rule is not significant under EO 12866.

The Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require HHS to analyze options for regulatory relief of small businesses. If a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of the rule on small entities and analyze regulatory options that could lessen the impact of the rule. HHS will use an RFA threshold of at least a 3 percent impact on at least 5 percent of small entities.

For purposes of the RFA, HHS considers all health care providers to be small entities either by meeting the Small Business Administration (SBA) size standard for a small business, or by being a nonprofit organization that is not dominant in its market. The current SBA size standard for health care providers ranges from annual receipts of $7 million to $35.5 million. As of January 1, 2017, over 12,000 covered entities participate in the 340B Program, which represent safety-net health care providers across the country. HHS has determined, and the Secretary certifies that this final rule will not have a significant impact on the operations of a substantial number of small manufacturers; therefore, we are not preparing an analysis of impact for this RFA. HHS estimates that the economic impact on small entities and small manufacturers will be minimal.

Unfunded Mandates Reform Act

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any 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 (adjusted annually for inflation) in any one year.'' In 2017, that threshold is approximately $148 million. HHS does not expect this rule to exceed the threshold.

Executive Order 13132—Federalism

HHS has reviewed this final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' This final rule would not ''have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that OMB approve all collections of information by a federal agency from the public before they can be implemented. This final rule is projected to have no impact on current reporting and recordkeeping burden for manufacturers under the 340B Program. This final rule would result in no new reporting burdens. Comments are welcome on the accuracy of this statement.

Dated: September 22, 2017.

George Sigounas,

Administrator, Health Resources and Services Administration.

Thomas E. Price,

Secretary, Department of Health and Human Services.

[FR Doc. 2017–20911 Filed 9–28–17; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 400 to 571, revised as of October 1, 2016, on page 319, in § 571.106, standard S5.3.11 is reinstated to read as follows:

§ 571.106 Standard No. 106; Brake hoses.

* * * * *

S5. Requirements—hydraulic brake hose, brake hose assemblies, and brake hose end fittings.

* * * * *

S5.3.11 *Dynamic ozone test.* A hydraulic brake hose shall not show cracks visible without magnification after having been subjected to a 48-hour dynamic ozone test (S6.9).

* * * * *

[FR Doc. 2017–21085 Filed 9–28–17; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 170815764–7877–01]

RIN 0648–BH12

International Fisheries; Pacific Tuna Fisheries; Revised 2017 Fishing Restrictions for Tropical Tuna in the Eastern Pacific Ocean

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

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Tuna Conventions Act to implement amendments to Resolution C–17–01 (*Conservation of Tuna in the Eastern Pacific Ocean During 2017*) per Resolution C–17–02 (*Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean During 2018–2020 and Amendment to Resolution C–17–01*) which was adopted by the Inter-American Tropical Tuna Commission (IATTC or Commission) in July 2017. Applicable to the purse seine fleet fishing for tropical tunas (bigeye, yellowfin, and skipjack tuna) in the eastern Pacific Ocean (EPO) and only for the remainder of the 2017 calendar year, the amendments to Resolution C–17–01 remove the total allowable catches (TACs) for bigeye tuna (BET) and yellowfin tuna (YFT), and replace them with an extension in the purse seine closure period from 62 days to 72 days. Additionally, to ensure that the time/area closure, known as the corralito, does not overlap with the extended closure periods, the amendments also shift the dates for the corralito closure. This rule is necessary for the conservation of tropical tuna stocks in the EPO and for the United States to satisfy its obligations as a member of the IATTC.

DATES: This final rule is effective September 29, 2017.

ADDRESSES: Copies of supporting documents that were prepared for this final rule, including the regulatory impact review (RIR) are available via the Federal e-Rulemaking Portal: *http://www.regulations.gov,* docket NOAA–NMFS–2017–0024 or contact with the Regional Administrator, Barry A. Thom, NMFS West Coast Region, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274, or *RegionalAdministrator.WCRHMS@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Taylor Debevec, NMFS at 562–980–4066.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. In 2003, the IATTC took the first step to dramatically revise the 1949 Convention by adopting the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), which did not enter into force until 2010 when the requite number of members agreed to the revisions. After the Antigua Convention had entered into force in 2010, the United States acceded to the Antigua Convention on February 24, 2016. The full text of the Antigua Convention is available at: *https://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf.*

The IATTC consists of 21 member nations and four cooperating non-member nations and facilitates scientific research into, as well as the conservation and management of, tuna and tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude. The IATTC maintains a scientific research and fishery monitoring program and regularly assesses the status of tuna, sharks, and billfish stocks in the EPO to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

International Obligations of the United States Under the Antigua Convention

As a Party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement decisions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951 *et seq.*) directs the Secretary of Commerce, in consultation with the Secretary of State

and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS.

IATTC Resolution on Tropical Tuna Conservation

The IATTC adopted Resolution C–17–02 by consensus at its 92nd meeting in July 2017. While the Resolution contains management measures for tropical tuna in the Convention Area for 2018–2020, it also contains amendments to C–17–01, which is applicable in 2017 only. The measures for 2018–2020 will be implemented in a different rulemaking. In contrast, this rule implements only the amendments to C–17–01 because they are applicable immediately and therefore need to be expeditiously implemented.

The IATTC adopted Resolution C–17–01 in February 2017. C–17–01 included a provision not previously utilized in recent IATTC resolutions: Convention Area-wide TACs for yellowfin and bigeye tuna caught by purse seine vessels. As the 92nd Meeting of the IATTC approached in July 2017, the purse seine catch levels were monitored by the IATTC staff, who notified the IATTC that the TAC for class size 4 to 6 purse seine vessels fishing on floating objects (97,711 metric tons) was near its limit. Due to the negative impacts an August closure would have on several countries, the Commission formulated an alternative solution that would relieve those social-financial impacts to industry while still protecting the stocks from overfishing. The IATTC scientific staff analyzed the conservation benefit of various alternatives for 2017 management of tropical tunas and recommended, as they had during previous meetings, extending the 62-day purse seine closure period.

Accordingly, the Commission agreed to amend C–17–01 to eliminate the TACs and extend the two closure period options from 62 days to 72 days. Two additional provisions of the amendment include:

- Allowing vessels that harvest tunas by encircling dolphins [1] to fish with that method during the 10-day extension of the closure period (because the separate TAC for that fishery was not close to being reached at the time of agreement to Resolution C–17–02), and
- shifting the dates of the time/area closure known as the corralito so that it does not overlap with the new dates of the closure periods.

Most provisions of Resolution C–17–01 remain unchanged by the amendments, including: Full retention of tropical tunas on purse seine vessels, an opportunity to apply for exemption to the purse seine closure periods due to force majeure, and a country-specific bigeye tuna catch limit for longline vessels greater than 24 meters in length.

Final Regulations—Tuna Conservation Measures for 2017

This final rule is implemented under the Tuna Conventions Act (16 U.S.C. 951 *et seq.*), as amended on November 5, 2015, by title II of Public Law 114–81.

This rule removes the two TACs for yellowfin and bigeye tuna codified at 50 CFR 300.25(d): Class size 4 to 6 purse seine vessels that fish on floating objects—97,711 mt, and class size 6 vessels fishing in association (chasing and encircling) with dolphins—162,182 mt. Under 50 CFR 300.25(e), the two closure period options for class 4 to 6 purse seine vessels (each vessel must choose only one by which it will abide) are extended from 62 days to 72 days as follows: July 29, 2017–October 8, 2017, or November 9, 2017–January 19, 2018. Purse seine vessels with a dolphin mortality limit may fish during the 10 days that are being added to the extended closure period they are observing, provided the vessels are not used to make sets on floating objects during those 10 days. Those periods are respectively September 29, 2017–October 8, 2017, or November 9, 2017–November 18, 2017. Lastly, the corralito area remains unchanged, but the dates of the closure are shifted to October 9, 2017–November 8, 2017.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions Act of 1950 and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

There are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act (PRA), and the existing collection-of-information requirements still apply under Control Number 0648–0387. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

The Assistant Administrator for Fisheries finds good cause, pursuant to 5 U.S.C. 553(b)(B), to waive advance notice and comment. The decision by the IATTC that is being implemented by this rule was made on July 28, 2017. NMFS has no discretion to change this decision. This decision is binding under international law, and failure to ensure domestic implementation would render the nation out of compliance with our international treaty obligations, as well as failing to adequately conserve and manage target stocks of tropical tuna. Therefore, providing advance notice and consideration of public comments before implementing this decision would be impracticable because the first closed period (described above) under the existing regulations ends on September 27, 2017, but under the newly adopted international treaty obligations, the United States must ensure that vessels subject to that first closed period are prevented from fishing beginning on September 28 for an additional 10 days. The public interest dictates that the nation adheres to international legal obligations and continues to adequately conserve and manage tropical tunas in the Pacific. Therefore, it would be impracticable and contrary to the public interest to publish a proposed rule and provide advance notice and comment before implementing the revisions to IATTC Resolution C–17–01.

The Assistant Administrator for Fisheries also finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of the rule. Since the binding IATTC resolution makes these measures effective immediately, and the extended closure dates begin on September 28, 2017, this rule must be enforceable at least by that date. As explained above, this date is set in a binding resolution and cannot be changed by NMFS. Failure to implement the resolution by this date would risk putting the United States out of compliance with our international Treaty obligations, as well as failing to adequately conserve and manage tropical tuna stocks in the Pacific.

Ensuring conservation of tropical tuna stocks in the EPO, and remaining in

[1] Some tuna fishing vessels in the Eastern Tropical Pacific Ocean intentionally chase pods of dolphin that are swimming along the ocean surface and set their nets around the dolphins in order to harvest the yellowfin tuna swimming beneath the dolphins. This practice is lawful and regulated.

compliance with binding international obligations of the United States, by expedient domestic implementation of Resolution C–17–02 through issuing this final rule now rather than risking violation of our obligations or the health of tuna stocks is in the public's interest. Therefore, there is good cause to waive the otherwise applicable requirement for a 30-day delay in effectiveness.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), requires an RFA analysis only for rules subject to notice and comment rulemaking under Section 553(b) of the Administrative Procedure Act or any other law. Because notice and comment are not required for this rule, as described above, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 300

Fish, Fisheries, Fishing, Fishing vessels, International organizations, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: September 26, 2017.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart C is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for 50 CFR part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

§ 300.24 [Amended]

■ 2. In § 300.24, remove paragraph (ii).

■ 3. In § 300.25, remove and reserve paragraph (d) and revise paragraphs (e)(1), (e)(3), and (e)(6) to read as follows:

§ 300.25 Fisheries management.

* * * * *

(e) * * *

(1) *Closure periods*—(i) *General rule.* A commercial purse seine fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area for 72 days during one of the following two closure periods:

(A) From 0000 hours Coordinated Universal Time (UTC) July 29, 2017, to 2400 hours UTC October 8, 2017; or,

(B) From 0000 hours UTC November 9, 2017, to 2400 hours UTC January 19, 2018.

(ii) *Vessels with DMLs.* Notwithstanding paragraph (e)(1)(i) of this section, a purse seine vessel for which a dolphin mortality limit has been assigned may fish during 10 days of the closure period the vessel selected, if the vessel makes no floating object sets during this period. The respective 10-day periods are:

(A) From 0000 hours UTC September 29, 2017, to 2400 hours UTC October 8, 2017; and,

(B) From 0000 hours UTC November 9, 2017, to 2400 hours UTC November 18, 2017.

* * * * *

(3) If written notification is not submitted per paragraph (e)(2) of this section for a vessel subject to the requirements under paragraph (e)(1)(i) of this section, that vessel must adhere to the closure period under paragraph (e)(1)(i)(B) of this section.

* * * * *

(6) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on October 9 to 2400 hours on November 8 in 2017 to fish with purse seine gear within the area bounded at the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude.

* * * * *

[FR Doc. 2017–20950 Filed 9–28–17; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 82, No. 188
Friday, September 29, 2017

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AO–FV–16–0016; AMS–SC–16–0011; SC16–989–1]

Raisins Produced From Grapes Grown in California; Secretary's Decision and Referendum Order on Proposed Amendments to Marketing Order No. 989

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to Marketing Order No. 989 (order), which regulates the handling of raisins produced from grapes grown in California and provides producers with the opportunity to vote in a referendum to determine if they favor the changes. Five amendments proposed by the Raisin Administrative Committee (RAC or Committee), the agency responsible for local administration of the order, would: Authorize production research; establish new nomination procedures for independent producer member and alternate member seats; add authority to regulate quality; add authority to establish different regulations for different markets; and add a continuance referenda requirement.

In addition, the Agricultural Marketing Service (AMS) proposed to: Remove order language pertaining to volume regulation and reserve pool authority; establish term limits for Committee members; and, to 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.

These proposed amendments would update the order to reflect changes in the industry and potential future changes, and would improve the operation and administration of the order.

DATES: The referendum will be conducted from December 4 through 15, 2017. The representative period for the purpose of the referendum is August 1, 2016, through July 31, 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 April 14, 2016, and published in the April 22, 2016, issue of the **Federal Register** (81 FR 23650) and a Recommended Decision issued on May 3, 2017, and published in the May 31, 2017, issue of the **Federal Register** (82 FR 24882).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore 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 May 3 and 4, 2016, in Clovis, California. 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** on April 22, 2016 (81 FR 23650). The notice of hearing contained five proposals submitted by the Committee and three proposals by USDA.

The amendments in this decision would:

(1) Authorize production research;

(2) Establish new nomination procedures for independent producer member and alternate member seats;

(3) Add authority to regulate quality;

(4) Add authority to establish different regulations for different markets;

(5) Add a continuance referenda requirement;

(6) Remove order language pertaining to volume regulation and reserve pool authority;

(7) Establish term limits for Committee members; and

(8) 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.

Conforming changes and corrections proposed by USDA include: Revising all references of ''offgrade'' to ''off-grade''; revising all references of ''nonnormal'' to ''non-normal''; and, revising all references to ''committee'' to ''Committee''. These corrections would result in consistent spelling of these terms throughout the order.

In addition, the words ''Processed Products Standardization and Inspection Branch'' in §§ 989.58(d) and 989.59(d) should be changed to ''Specialty Crops Inspection Division.'' Similarly, ''Processed Products Branch, Fruit and Vegetable Division'' in

§ 989.102 should be changed to ''Specialty Crops Inspection Division.'' These corrections would reflect the official name change of the AMS's inspection service office for fruit, vegetables and specialty crops.

Lastly, an additional correction has been added to change the amendatory language in § 989.55, 989.56, 989.65, 989.66, 989.67, 989.71, 989.72, 989.82, 989.154, 989.156, 989.166, 989.167, 989.221, 989.257 and 989.401, from ''remove'' to ''delete and reserve''. This change would prevent the unintentional renumbering of remaining sections of the order.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on May 3, 2017, filed with the Hearing Clerk, USDA, a Recommended Decision and Opportunity to File Written Exceptions thereto by June 30, 2017. One exception was filed.

The exception filed opposed the proposed amendment to establish term limits. The commenter, representing the Raisin Bargaining Association (RBA), stated that the RBA Board of Directors voted unanimously to use the association's block voting option to vote against the term limits proposal. The commenter reasoned that the RAC has an active and diverse membership, and that current RAC meetings are well attended and benefit from membership discussions. The commenter further argued that term limits, if implemented, would limit the industry's choice as to who may represent them on the RAC and would prevent experienced persons from continuing to participate. Lastly, the commenter stated that the RAC had also unanimously voted against the term limits proposal in meetings held prior to the public hearing.

Currently, the term of office of each member and alternate member of the RAC is two years. There are no provisions related to term limits in the marketing order. USDA is proposing that members serve no more than four consecutive two-year terms, or a total of eight years. Once a member has served on the RAC for four consecutive terms, or eight years, the member could not serve as a member for at least one year before being eligible to serve again.

The USDA believes that all marketing order programs should include tenure limitations for Committee membership. Incorporating the proposed amendment into the order would uphold the intent of the 1982 *USDA Fruit, Vegetable and Specialty Crop Marketing Order Guidelines,* which resulted from a 1981 Presidential Task Force on Regulatory Relief study finding that tenure should be limited. Further, if implemented, term limits would increase the number of individuals in the industry with Committee experience and provide the Committee with new perspectives and ideas. Therefore, the proposal to add a provision for term limits to the order is not removed as a result of the filed exception.

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.

According to the hearing transcript, there are approximately 3,000 raisin producers in California. According to National Agricultural Statistics Service data presented at the hearing, the total value of production of raisins in the 2014/15 crop year is $598,052,000. Taking the total value of production for raisins and dividing it by the total number of raisin producers provides an average return per producer of $199,950.67. A small producer 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 raisin producers are considered small entities under SBA's standards.

According to the industry, there were 23 handlers for the 2015/16 crop year. A small agricultural service firm as defined by the SBA is one that grosses less than $7,500,000 annually. Based on Committee data, 13 handlers would be considered small entities under SBA's standards. Slightly more than half of the industry's handlers are considered small entities under SBA's standards.

The production area regulated under the order covers the state of California. Acreage devoted to raisin production in the regulated area has declined in recent years. According to data presented at the hearing, bearing acreage for raisins reached a high of 280,000 acres during the 2000/01 crop year. Since then, bearing acreage for raisins has decreased 32 percent to 190,000 acres in 2014/15. As a result, the total production of raisins reached a high during the 2000/01 crop year of 484,500 tons (dried basis). Since the 2000/01 crop year, total production for raisins has decreased 32 percent to 328,600 tons in 2014/15.

During the hearing held May 3 and 4, 2016, interested persons were invited to present evidence at the hearing on the probable regulatory and informational 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 any burdensome effects or a significant economic impact on a substantial number of small agricultural producers or firms.

Material Issue Number 1—Authorize Production Research

The proposal described in Material Issue 1 would amend § 989.53 to authorize production research.

Currently, the California Raisin Marketing Board (CRMB) is the funding source for production research for the California raisin industry. Three years ago, payments of assessments to the CRMB were suspended due to the results of litigation. Without funding the CRMB has been unable to conduct any new production research projects. If amended, this proposal would authorize the RAC to conduct production research without having to rely on the CRMB.

Witnesses supported this proposal and stated that future research could potentially impact producers in many ways, such as reducing pesticide usage or the development of new varieties that are less labor intensive. Production research would provide the raisin industry the ability to meet the needs of the ever changing domestic and international markets. According to a witness's testimony, the benefits of the proposed amendment would outweigh any costs.

For the reasons described above, it is determined that the proposed amendment would benefit industry participants and improve administration of the order. The costs of implementing this proposal would be minimal, and not have a significant impact on a substantial number of small entities.

Material Issue Number 2—Authorize Separate Nominations for Independent Producer Member and Independent Producer Alternate Member Seats

The proposal described in Material Issue 2 would amend §§ 989.29 and 989.129 to authorize separate nominations for independent producer members and independent producer alternate member seats.

Currently, the RAC has difficulty filling Committee seats designated for independent producer members and independent producer alternate members. Independent producer

alternate member seats have gone unfilled for several consecutive years.

According to witnesses' testimony, the purpose of the proposal is to increase the participation of independent producers willing to participate on the Committee. Full participation would give the independent producers their represented voice on RAC decisions.

In conclusion, it is determined that the benefits of increased Committee participation by independent producers would outweigh any costs associated with the implementation of the proposed amendment. The costs of implementing this proposal would be minimal, and would not have a significant impact on a substantial number of small entities.

Material Issue Number 3—Add Authority To Regulate Quality

The proposal described in Material Issue 3 would amend §§ 989.58, 989.59 and 989.61 to add authority to regulate quality. A corresponding change would also revise the heading prior to § 989.58 to include quality.

Currently, §§ 989.58 and 989.59 of the order state that the Committee has the authority to recommend grade and condition standards regulation under the order. The attribute ''quality'' is not specifically mentioned. The proposed amendment would add language to include ''quality'' as an attribute that can be regulated under the order.

According to a witness, the proposed amendment would give the Committee flexibility to ensure consumer safety by setting quality standards for residue levels for herbicides, pesticides or fungicides. The quality standards would be equally applied to all handlers of raisins within the U.S.; some handlers are already testing for certain types of fungicides so the increased costs would be minimal.

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 regulations, increased consumer safety, and other benefits gained from implementing this proposal. The costs of implementing this proposal would not have a significant impact on a substantial number of small entities.

Material Issue Number 4—Add Authority To Establish Different Regulations for Different Markets

The proposal described in Material Issue 4 would amend § 989.59 to add authority to establish different regulations for different markets.

The order does not currently allow for different quality or grade standards to be applied to different foreign markets. The language in the order only has two classifications for grade and condition standards, Grade A or Grade B. The current grade and condition standards are consistent across all markets.

The proposed amendment would give the Committee the authority to develop regulations for individual foreign markets that would be best suited for that specific destination. This proposal would give the industry flexibility to tailor product attributes to meet the foreign consumer profile and the customer demands for each individual market.

For the reasons described above, it is determined that any additional costs incurred for this proposal would be outweighed by the increased flexibility for the industry to respond to a changing global marketplace. The costs of implementing this proposal would not have a significant impact on a substantial number of small entities.

Material Issue Number 5—Continuance Referenda

The proposal described in Material Issue 5 would amend § 989.91 to require continuance referenda.

The proposed amendment would require the USDA to conduct a continuance referenda between year five and year six for the first referendum and every six years thereafter to assure that the order is responsive to industry needs and changing circumstances. A witness testified that a continuance referenda is the best tool for assuring that the order remains responsive to the needs of the industry. While a continuance referenda will not directly improve producer returns, it will indirectly assure that the industry believes that the order is operating in the producer's best interest.

For these reasons, it is determined that the benefits of conducting a continuance referenda would outweigh the potential costs of implementing this proposal. The costs of implementing this proposal would be minimal, and would not have a significant impact on a substantial number of small entities.

Material Issue Number 6—Remove Volume Regulations and Reserve Pool Authority

The proposal described in Material Issue 6 would amend the order to remove volume regulation and reserve pool authority. This would include: deleting and reserving §§ 989.55 and 989.56, §§ 989.65 through 989.67, §§ 989.71, 989.72, 989.82, 989.154, 989.156, 989.166, 989.167, 989.221, 989.257, and 989.401; revising §§ 989.11, 989.53, 989.54, 989.58, 989.59, 989.60, 989.73, 989.79, 989.80, 989.84, 989.158, 989.173, and 989.210; and re-designating § 989.70 as § 989.96. Corresponding changes would also remove the following headings: ''Volume Regulation'' prior to § 989.65; ''Volume Regulation'' prior to § 989.166; and, ''Subpart-Schedule of Payments'' prior to § 989.401.

The proposed amendment would remove all authority for the RAC to establish volume restrictions and a reserve pool. On June 22, 2015, the United States Supreme Court, in *Horne* v. *USDA,* ruled that the application of the marketing order's reserve pool authority to the Hornes was a taking under the Fifth Amendment to the U.S. Constitution. By a July 16, 2015, letter to the RAC, USDA stated, ''In light of the Horne decision, the U.S. Department of Agriculture has decided not to authorize the reserve program of the Federal marketing order for California raisins for the foreseeable future, effective immediately.''

One witness explained that bearing acres have declined the past ten years that supports the theory that the California raisin industry is adjusting to a decreasing or flat demand for the product. The witness stated that, in the future, supply will likely remain in better balance with demand and, therefore, the reserve pool and volume regulation are no longer as relevant as they were in higher production times. To further the point, the witness stated that the order's reserve pool authority has not been utilized since 2010.

The proposal would be a relaxation of regulations, for this reason, it is determined that no significant impact on small business entities is anticipated from this proposed change.

Material Issue Number 7—Establish Term Limits

The proposal described in Material Issue 7 would amend § 989.28 to establish term limits.

The proposed amendment would establish term limits of up to four consecutive two-year terms for members only, not alternate members. If implemented, in no event would any member serve more than eight consecutive years on the Committee. The proposal for term limits would conform the order to other existing programs. USDA strives to maintain continuity in the service of its members.

According to a witness's testimony, term limits in other marketing orders have generally proven to have the intended impact of increased participation and diversity. For these

reasons, it is determined that the benefits of the proposal would outweigh the potential costs of implementation.

The costs attributed to these proposed changes are minimal; therefore, there will not be a significant impact on a substantial number of small entities.

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 California raisins.

RAC meetings regarding these proposals, as well as the hearing date and location, were widely publicized throughout the California raisin industry, and all interested persons were invited to attend the meetings and the hearing to participate in RAC deliberations on all issues. All RAC 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 were invited to submit information on the regulatory and informational impacts of this action on small businesses.

Paperwork Reduction Act

Current information collection requirements for Part 989 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; Discussion of Exception

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the May 31, 2017, issue of the **Federal Register** are hereby approved and adopted.

One exception was filed in opposition to the proposal to implement term limits. The commenter reasoned that the RAC has an active and diverse membership, and that current RAC meetings are well attended and benefit from membership discussions. The commenter further argued that term limits, if implemented, would limit the industry's choice as to who may represent them on the RAC and would prevent experienced persons from continuing to participate.

The USDA believes that all marketing order programs should include tenure limitations for Committee membership. Incorporating the proposed amendment into the order would uphold the intent of the 1982 *USDA Fruit, Vegetable and Specialty Crop Marketing Order Guidelines,* which resulted from a 1981 Presidential Task Force on Regulatory Relief study finding that tenure should be limited.

Ruling on Exception

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exception filed to the Recommended Decision was carefully considered in conjunction with the recorded evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exception, such exception is denied.

Marketing Order

Annexed hereto and made a part hereof is the document entitled ''Order Amending the Order Regulating the Handling of Raisins Produced from Grapes Grown in California.'' 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 raisins produced from grapes grown in California is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of raisins in the production area.

The representative period for the conduct of such referendum is hereby determined to be August 1, 2016, through July 31, 2017.

The agents of the Secretary to conduct such referendum are hereby designated to be Jeffrey Smutny and Kathie Notoro, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 2202 Monterey St., Ste. 102B, Fresno, California 93721–3129; telephone: (559) 487–5901; or fax: (559) 487–5906, or Email: *Jeffrey.Smutny@ams.usda.gov* or *Kathie.Notoro@ams.usda.gov,* respectively.

Order Amending the Order Regulating the Handling of Raisins Produced From Grapes Grown in California [1]

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.

[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.

(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. 989, regulating the handling of raisins produced from grapes grown in California. 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 raisins produced from grapes 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 raisins produced from grapes grown in the production area; and

(5) All handling of raisins produced from grapes 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 raisins produced from grapes grown in California 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 May 3, 2017, and published in the May 31, 2017, issue of the **Federal Register** (82 FR 24882) 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 989

Raisins, Marketing agreements, Reporting and recordkeeping requirements.

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

PART 989—RAISINS PRODUCED BY GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Subpart A—[Amended]

■ 2. Designate the subpart labeled ''Order Regulating Handline'' as subpart A.

■ 3. Section 989.11 is revised to read as follows:

§ 989.11 Producer.

Producer means any person engaged in a proprietary capacity in the production of grapes which are sun-dried or dehydrated by artificial means until they become raisins.

■ 4. Revise § 989.28 to read as follows:

§ 989.28 Term of office.

(a) The term of office of all representatives serving on the Committee shall be for two years and shall end on April 30 of even numbered calendar years; *Provided,* That each such member and alternate member shall continue to serve until their successor is selected and has qualified.

(b) Representatives may serve up to four consecutive, two-year terms of office. In no event shall any representative serve more than eight consecutive years on the Committee. For purposes of determining when a representative has served four consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office. This limitation on tenure shall not include service on the Committee prior to implementation of this amendment. This limitation on tenure shall not apply to the service of alternate members.

■ 5. In § 989.29:

■ a. Revise paragraph (b)(2)(ii);

■ b. Redesignate paragraph (b)(2)(iii) as paragraph (b)(2)(iv);

■ c. Add a new paragraph (b)(2)(iii); and

■ d. Revise newly redesignated paragraph (b)(2)(iv).

The revisions and addition read as follows:

§ 989.29 Initial members and nomination of successor members.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(ii) Each such producer whose name is offered in nomination for producer member positions to represent on the Committee independent producers or producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall be given the opportunity to provide the Committee a short statement outlining qualifications and desire to serve if selected. Similarly, each such producer whose name is offered in nomination for producer alternate member positions to represent on the Committee independent producers or producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall be given the opportunity to provide the Committee a short statement outlining qualifications and desire to serve if selected. These brief statements, together with a ballot and voting instructions, shall be mailed to all independent producers and producers who are affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions during the preceding crop year of record with the Committee in each district. The producer member candidate receiving the highest number of votes shall be designated as the first member nominee, the second highest shall be designated as the second member nominee until nominees for all producer member positions have been filled. Similarly, the producer alternate member candidate receiving the highest number of votes shall be designated as the first alternate member nominee, the second highest shall be designated as the second alternate member nominee until nominees for all member positions have been filled.

(iii) In the event that there are more producer member nominees than positions to be filled and not enough producer alternate member nominees to fill all positions, producer member nominees not nominated for a member seat may be nominated to fill vacant alternate member seats. Member seat nominees shall indicate, prior to the nomination vote, whether they are willing to accept nomination for an alternate seat in the event they are not

nominated for a member seat and there are vacant alternate member seats. Member seat nominees that do not indicate willingness to be considered for vacant alternate member seats shall not be considered.

(iv) Each independent producer or producer affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. Write-in candidates shall be accepted. The person receiving the most votes with respect to each position to be filled, in accordance with paragraph (b)(2)(ii) and (iii) of this section, shall be the person to be certified to the Secretary as the nominee. The Committee may, subject to the approval of the Secretary, establish rules and regulations to effectuate this section.

* * * * *

■ 6. In § 989.53(a), revise the introductory text and remove the text that follows paragraph (a)(5) to read as follows:

§ 989.53 Research and development.

(a) *General.* The Committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, market research and development, marketing promotion including paid advertising, designed to assist, improve, or promote the production, marketing, distribution, and consumption of raisins in domestic and foreign markets. These projects may include, but need not be limited to those designed to:

* * * * *

■ 7. In § 989.54:

■ a. Remove paragraphs (a) through (d) and (g);

■ b. Remove paragraph (e)(4);

■ c. Redesignate paragraphs (e)(5) through (e)(10) as (e)(4) through (e)(9), respectively;

■ d. Redesignate paragraphs (e), (f), and (h) as paragraphs (a), (b), and (c), respectively; and

■ e. Revise newly redesignated paragraphs (a) introductory text, (a)(1), (a)(4), (a)(5) and (c).

The revisions read as follows:

§ 989.54 Marketing policy.

(a) Each crop year, the Committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy, including quality regulations for the pending crop. In developing the marketing policy, the Committee may give consideration to the production, harvesting, processing, and storage conditions of that crop, as well as the following factors:

(1) The estimated tonnage held by producers and handlers at the beginning of the crop year;

* * * * *

(4) An estimated desirable carryout at the end of the crop year;

(5) The estimated market demand for raisins, considering the estimated world raisin supply and demand situation;

* * * * *

(c) *Publicity.* The Committee shall promptly give reasonable publicity to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the Committee, where they shall be made available for examination by any producer, dehydrator, handler, or cooperative bargaining association representative. The Committee shall notify handlers, dehydrators and the cooperative bargaining association(s), and give reasonable publicity to producers of its computation.

§§ 989.55 and 989.56 [Removed and reserved].

■ 8. Sections 989.55 and 989.56 are removed and reserved.

■ 9. Revise the undesignated heading prior to § 989.58 to read as follows: ''Grade, Quality, and Condition Standards''.

■ 10. In § 989.58, revise paragraphs (a), (b), (d)(1), (e)(1), and (e)(4) to read as follows:

§ 989.58 Natural condition raisins.

(a) *Regulation.* No handler shall acquire or receive natural condition raisins which fail to meet such minimum grade, quality, and condition standards as the Committee may establish, with the approval of the Secretary, in applicable rules and regulations: *Provided,* That a handler may receive raisins for inspection, may receive off-grade raisins for reconditioning and may receive or acquire off-grade raisins for use in eligible non-normal outlets: *And provided further,* That a handler may acquire natural condition raisins which exceed the tolerance established for maturity under a weight dockage system established pursuant to rules and regulations recommended by the Committee and approved by the Secretary. Nothing contained in this paragraph shall apply to the acquisition or receipt of natural condition raisins of a particular varietal type for which minimum grade, quality, and condition standards are not applicable or then in effect pursuant to this part.

(b) *Changes in minimum grade, quality, and condition standards for natural condition raisins.* The Committee may recommend to the Secretary changes in the minimum grade, quality, and condition standards for natural condition raisins of any varietal type and may recommend to the Secretary that minimum grade, quality, and condition standards for any varietal type be added to or deleted. The Committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall approve any such change if he finds, upon the basis of data submitted to him by the Committee or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the Act.

* * * * *

(d) * * *

(1) Each handler shall cause an inspection and certification to be made of all natural condition raisins acquired or received by him, except with respect to:

(i) An interplant or interhandler transfer of off-grade raisins as described in paragraph (e)(2) of this section, unless such inspection and certification are required by rules and procedures made effective pursuant to this amended subpart;

(ii) An interplant or interhandler transfer of standard raisins as described in § 989.59(e);

(iii) Raisins received from a dehydrator which have been previously inspected pursuant to paragraph (d)(2) of this section;

(iv) Any raisins for which minimum grade, quality, and condition standards are not then in effect;

(v) Raisins received from a cooperative bargaining association which have been inspected and are in compliance with requirements established pursuant to paragraph (d)(3) of this section; and

(vi) Any raisins, if permitted in accordance with such rules and procedures as the Committee may establish with the approval of the Secretary, acquired or received for disposition in eligible non-normal outlets. Except as otherwise provided in

this section, prior to blending raisins, acquiring raisins, storing raisins, reconditioning raisins, or acquiring raisins which have been reconditioned, each handler shall obtain an inspection certification showing whether or not the raisins meet the applicable grade, quality, and condition standards: *Provided,* That the initial inspection for infestation shall not be required if the raisins are fumigated in accordance with such rules and procedures as the Committee shall establish with the approval of the Secretary. The handler shall submit or cause to be submitted to the Committee a copy of such certification, together with such other documents or records as the Committee may require. Such certification shall be issued by inspectors of the Processed Products Standardization and Inspection Branch of the U.S. Department of Agriculture, unless the Committee determines, and the Secretary concurs in such determination, that inspection by another agency would improve the administration of this amended subpart. The Committee may require that raisins held on memorandum receipt be re-inspected and certified as a condition for their acquisition by a handler.

* * * * *

(e) * * *

(1) Any natural condition raisins tendered to a handler which fail to meet the applicable minimum grade, quality, and condition standards may:

(i) Be received or acquired by the handler for disposition, without further inspection, in eligible non-normal outlets;

(ii) Be returned unstemmed to the person tendering the raisins; or

(iii) Be received by the handler for reconditioning. Off-grade raisins received by a handler under any one of the three described categories may be changed to any other of the categories under such rules and procedures as the Committee, with the approval of the Secretary, shall establish. No handler shall ship or otherwise dispose of off-grade raisins which he does not return to the tenderer, transfer to another handler as provided in paragraph (e)(2) of this section, or recondition so that they at least meet the minimum standards prescribed in or pursuant to this amended subpart, except into eligible non-normal outlets.

* * * * *

(4) If the handler is to acquire the raisins after they are reconditioned, his obligation with respect to such raisins shall be based on the weight of the raisins (if stemmed, adjusted to natural condition weight) after they have been reconditioned.

* * * * *

■ 11. In § 989.59, revise paragraphs (a), (b), (d), (e), and (g) to read as follows:

§ 989.59 Regulation of the handling of raisins subsequent to their acquisition by handlers.

(a) *Regulation.* Unless otherwise provided in this part, no handler shall:

(1) Ship or otherwise make final disposition of natural condition raisins unless they at least meet the effective and applicable minimum grade, quality, and condition standards for natural condition raisins; or

(2) Ship or otherwise make final disposition of packed raisins unless they at least meet such minimum grade quality, and condition standards established by the Committee, with the approval of the Secretary, in applicable rules and regulations or as later changed or prescribed pursuant to the provisions of paragraph (b) of this section: *Provided,* That nothing contained in this paragraph shall prohibit the shipment or final disposition of any raisins of a particular varietal type for which minimum standards are not applicable or then in effect pursuant to this part. *And provided further,* That a handler may grind raisins, which do not meet the minimum grade, quality, and condition standards for packed raisins because of mechanical damage or sugaring, into a raisin paste. The Committee may establish, with approval of the Secretary, different grade, quality, and condition regulations for different markets.

(b) The Committee may recommend changes in the minimum grade, quality, or condition standards for packed raisins of any varietal type and may recommend to the Secretary that minimum grade, quality, or condition standards for any varietal type be added or deleted. The Committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall approve any such change if he finds, upon the basis of data submitted to him by the Committee or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the Act.

* * * * *

(d) *Inspection and certification.* Unless otherwise provided in this section, each handler shall, at his own expense, before shipping or otherwise making final disposition of raisins, cause an inspection to be made of such raisins to determine whether they meet the then applicable minimum grade, quality, and condition standards for natural condition raisins or the then applicable minimum standards for packed raisins. Such handler shall obtain a certificate that such raisins meet the aforementioned applicable minimum standards and shall submit or cause to be submitted to the Committee a copy of such certificate together with such other documents or records as the Committee may require. The certificate shall be issued by the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, unless the Committee determines, and the Secretary concurs in such determination, that inspection by another agency will improve the administration of this amended subpart. Any certificate issued pursuant to this paragraph shall be valid only for such period of time as the Committee may specify, with the approval of the Secretary, in appropriate rules and regulations.

(e) *Inter-plant and inter-handler transfers.* Any handler may transfer from his plant to his own or another handler's plant within the State of California any raisins without having had such raisins inspected as provided in paragraph (d) of this section. The transferring handler shall transmit promptly to the Committee a report of such transfer, except that transfers between plants owned or operated by the same handler need not be reported. Before shipping or otherwise making final disposition of such raisins, the receiving handler shall comply with the requirements of this section.

* * * * *

(g) *Exemption of experimental and specialty packs.* The Committee may establish, with the approval of the Secretary, rules and procedures providing for the exemption of raisins in experimental and specialty packs from one or more of the requirements of the minimum grade, quality, or condition standards of this section, together with the inspection and certification requirements if applicable.

■ 12. Amend § 989.60 by revising paragraph (a) to read as follows:

§ 989.60 Exemption.

(a) Notwithstanding any other provisions of this amended subpart, the Committee may establish, with the approval of the Secretary, such rules and procedures as may be necessary to permit the acquisition and disposition of any off-grade raisins, free from any or

all regulations, for uses in non-normal outlets.

* * * * *

■ 13. Section 989.61 is revised to read as follows:

§ 989.61 Above parity situations.

The provisions of this part relating to minimum grade, quality, and condition standards and inspection requirements, within the meaning of section 2(3) of the Act, and any other provisions pertaining to the administration and enforcement of the order, shall continue in effect irrespective of whether the estimated season average price to producers for raisins is in excess of the parity level specified in section 2(1) of the Act.

■ 14. Remove the undesignated heading ''Volume Regulation'' prior to § 989.65.

§§ 989.65–989.67 [Removed and reserved].

■ 15. Sections 989.65, 989.66, and 989.67 are removed and reserved.

■ 16. Redesignate § 989.70 as § 989.96.

§§ 989.71–989.72 [Removed and reserved].

■ 17. Sections 989.71 and 989.72 are removed and reserved.

■ 18. Amend § 989.73 by revising paragraph (b) to read as follows:

§ 989.73 Reports.

* * * * *

(b) *Acquisition reports.* Each handler shall submit to the Committee in accordance with such rules and procedures as are prescribed by the Committee, with the approval of the Secretary, certified reports, for such periods as the Committee may require, with respect to his acquisitions of each varietal type of raisins during the particular period covered by such report, which report shall include, but not be limited to:

(1) The total quantity of standard raisins acquired;

(2) The total quantity of off-grade raisins acquired pursuant to § 989.58(e)(1)(i); and

(3) Cumulative totals of such acquisitions from the beginning of the then current crop year to and including the end of the period for which the report is made. Upon written application made to the Committee, a handler may be relieved of submitting such reports after completing his packing operations for the season. Upon request of the Committee, each handler shall furnish to the Committee, in such manner and at such times as it may require, the name and address of each person from whom he acquired raisins and the quantity of each varietal type of raisins acquired from each such person.

* * * * *

■ 19. Section 989.79 is revised to read as follows:

§ 989.79 Expenses.

The Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the Committee and for such purposes as he may, pursuant to this subpart, determine to be appropriate. The funds to cover such expenses shall be obtained levying assessments as provided in § 989.80. The Committee shall file with the Secretary for each crop year a proposed budget of these expenses and a proposal as to the assessment rate to be fixed pursuant to § 989.80, together with a report thereon. Such filing shall be not later than October 5 of the crop year, but this date may be extended by the Committee not more than 5 days if warranted by a late crop.

■ 20. In § 989.80, revise paragraphs (a) through (c) to read as follows:

§ 989.80 Assessments.

(a) Each handler shall pay to the Committee, upon demand, his pro rata share of the expenses which the Secretary finds will be incurred, as aforesaid, by the Committee during each crop year less any amounts credited pursuant to § 989.53. Such handler's pro rata share of such expenses shall be equal to the ratio between the total raisin tonnage acquired by such handler during the applicable crop year and the total raisin tonnage acquired by all handlers during the same crop year.

(b) Each handler who reconditions off-grade raisins but does not acquire the standard raisins recovered therefrom shall, with respect to his assessable portion of all such standard raisins, pay to the Committee, upon demand, his pro rata share of the expenses which the Secretary finds will be incurred by the Committee each crop year. Such handler's pro rata share of such expenses shall be equal to the ratio between the handler's assessable portion (which shall be a quantity equal to such handler's standard raisins which are acquired by some other handler or handlers) during the applicable crop year and the total raisin tonnage acquired by all handlers.

(c) The Secretary shall fix the rate of assessment to be paid by all handlers on the basis of a specified rate per ton. At any time during or after a crop year, the Secretary may increase the rate of assessment to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the Committee. Each handler shall pay such additional assessment to the Committee upon demand. In order to provide funds to carry out the functions of the Committee, the Committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against such handler during the crop year. The payment of assessments for the maintenance and functioning of the Committee, and for such purposes as the Secretary may pursuant to this subpart determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

* * * * *

§ 989.82 [Removed and reserved].

■ 21. Section 989.82 is removed and reserved.

■ 22. Section 989.84 is revised to read as follows:

§ 989.84 Disposition limitation.

No handler shall dispose of standard raisins, off-grade raisins, or other failing raisins, except in accordance with the provisions of this subpart or pursuant to regulations issued by the committee.

■ 23. In § 989.91:

■ a. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and;

■ b. Add a new paragraph (c).

The addition to read as follows:

§ 989.91 Suspension or termination.

* * * * *

(c) No less than five crop years and no later than six crop years after the effective date of this amendment, the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six crop years thereafter. The Secretary may terminate the provisions of this part at the end of any crop year in which the Secretary has found that continuance of this part is not favored by a two-thirds majority of voting producers, or a two-thirds majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of grapes used in the production of raisins in the State of California. Such termination shall be announced on or before the end of the crop year.

* * * * *

Subpart B—Administrative Requirements

■ 24. Designate the subpart labeled ''Administrative Rules and Regulations'' as subpart B and revise the heading as shown above.

■ 25. Section 989.129 is revised to read as follows:

§ 989.129 Voting at nomination meetings.

Any person (defined in § 989.3 as an individual, partnership, corporation, association, or any other business unit) who is engaged, in a proprietary capacity, in the production of grapes which are sun-dried or dehydrated by artificial means to produce raisins and who qualifies under the provisions of § 989.29(b)(2) shall be eligible to cast one ballot for a nominee for each producer member position and one ballot for a nominee for each producer alternate member position on the committee which is to be filled for his district. Such person must be the one who or which: (a) Owns and farms land resulting in his or its ownership of such grapes produced thereon; (b) rents and farms land, resulting in his or its ownership of all or a portion of such grapes produced thereon; or (c) owns land which he or it does not farm and, as rental for such land, obtains the ownership of a portion of such grapes or the raisins. In this connection, a partnership shall be deemed to include two or more persons (including a husband and wife) with respect to land the title to which, or leasehold interest in which, is vested in them as tenants in common, joint tenants, or under community property laws, as community property. In a landlord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote for a nominee for each producer member position and one vote for each producer alternate member position. Hence, where two persons operate land as landlord and tenant on a share-crop basis, each person is entitled to one vote for each such position to be filled. Where land is leased on a cash rental basis, only the person who is the tenant or cash renter (producer) is entitled to vote. A partnership or corporation, when eligible, is entitled to cast only one vote for a nominee for each producer position to be filled in its district.

§ 989.154 [Removed and reserved].

§ 989.156 [Removed and reserved].

■ 26. Sections 989.154 and 989.156 are removed and reserved.

■ 27. Amend § 989.158 by revising paragraph (c)(4)(i) to read as follows:

§ 989.158 Natural condition raisins.

* * * * *

(c) * * *

(4) * * *

(i) The handler shall notify the inspection service at least one business day in advance of the time such handler plans to begin reconditioning each lot of raisins, unless a shorter period is acceptable to the inspection service. Such notification shall be provided verbally or by other means of communication, including email. Natural condition raisins which have been reconditioned shall continue to be considered natural condition raisins for purposes of reinspection (inspection pursuant to § 989.58(d)) after such reconditioning has been completed, if no water or moisture has been added; otherwise, such raisins shall be considered as packed raisins. The weight of the raisins reconditioned successfully shall be determined by reweighing, except where a lot, before reconditioning, failed due to excess moisture only. The weight of such raisins resulting from reconditioning a lot failing account excess moisture may be determined by deducting 1.2 percent of the weight for each percent of moisture in excess of the allowable tolerance. When necessary due to the presence of sand, as determined by the inspection service, the requirement for deducting sand tare and the manner of its determination, as prescribed in paragraph (a)(1) of this section, shall apply in computing the net weight of any such successfully reconditioned natural condition raisins. The weight of the reconditioned raisins acquired as packed raisins shall be adjusted to natural condition weight by the use of factors applicable to the various degrees of processing accomplished. The applicable factor shall be that selected by the inspector of the reconditioned raisins from among factors established by the Committee with the approval of the Secretary.

* * * * *

■ 28. Remove the undesignated heading ''Volume Regulation'' prior to § 989.166 is removed.

§ 989.166–989.167 [Removed and reserved].

■ 29. Sections 989.166 and 989.167 are removed and reserved.

■ 30. In § 989.173:

■ a. Remove paragraphs (b)(2)(ii), (f), and (g)(1)(ii);

■ b. Redesignate paragraph (b)(2)(iii), (g) and (g)(1)(iii) as paragraphs (b)(2)(ii), (f) introductory text and (f)(1)(ii), respectively; and

■ c. Revise paragraphs (a), (b)(2)(i), newly redesignated paragraph (b)(2)(ii), (c)(1), (d)(1), (d)(1)(v), newly redesignated paragraph (f)(1)(ii), (f)(2)(i) and (f)(3).

The revisions read as follows:

§ 989.173 Reports.

(a) *Inventory reports.* Each handler shall submit to the Committee as of the close of business on July 31 of each crop year, and not later than the following August 6, an inventory report which shall show, with respect to each varietal type of raisins held by such handler, the quantity of off-grade raisins segregated as to those for reconditioning and those for disposition as such. *Provided,* That, for the Other Seedless varietal type, handlers shall report the information required in this paragraph separately for the different types of Other Seedless raisins. Upon request by the Committee, each handler shall file at other times, and as of other dates, any of the said information which may reasonably be necessary and which the Committee shall specify in its request.

(b) * * *

(2) * * *

(i) The total net weight of the standard raisins acquired during the reporting period; and

(ii) The cumulative totals of such acquisitions from the beginning of the then current crop year.

* * * * *

(c) * * *

(1) Each month each handler who is not a processor shall furnish to the Committee, on an appropriate form provided by the Committee and so that it is received by the Committee not later than the seventh day of the month, a report showing the aggregate quantity of each varietal type of packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by such handler during the preceding month (exclusive of transfers within the State of California between plants of any such handler and from such handler to other handlers): *Provided,* That, for the Other Seedless varietal type, handlers shall report such information for the different types of Other Seedless raisins. Such required information shall be segregated as to:

* * * * *

(d) * * *

(1) Any handler who transfers raisins to another handler within the State of California shall submit to the Committee not later than five calendar days following such transfer a report showing:

* * * * *

(v) If packed, the transferring handler shall certify that such handler is transferring only acquired raisins that meet all applicable marketing order requirements, including reporting, incoming inspection, and assessments.

* * * * *

(f) * * *

(1) * * *

(i) The quantity of raisins, segregated as to locations where they are stored

and whether they are natural condition or packed;

(ii) * * *

(2) * * *

(i) The total net weight of the standard raisins acquired during the reporting period; and

* * * * *

(3) *Disposition report of organically-produced raisins.* No later than the seventh day of each month, handlers who are not processors shall submit to the Committee, on an appropriate form provided by the Committee, a report showing the aggregate quantity of packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by such handler during the preceding month (exclusive of transfer within the State of California between the plants of any such handler and from such handler to other handlers). Such information shall include:

* * * * *

Subpart C—Supplementary Requirements

■ 31. Designate the subpart labeled ''Supplementary Regulations'' as subpart C and revise the heading as shown above.

■ 32. In § 989.210:

■ a. Remove paragraphs (b), (c) and (e);

■ b. Redesignate paragraph (d) as (b), paragraph (f) as (c), and paragraph (g) as (d); and

■ c. Revise newly redesignated paragraph (b).

The revision to read as follows:

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.

* * * * *

(b) *Assessments.* Assessments on any lot of raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to a weight dockage system shall be applicable to the creditable weight of such lot.

* * * * *

■ 34. Sections 989.221 and 989.257 are deleted and reserved.

Subpart D—[Amended]

■ 35. Designate the subpart labeled ''Assessment Rates'' as subpart D.

■ 36. The subpart heading ''Subpart-Schedule of Payments'' prior to § 989.401 is removed.

■ 37. Section 989.401 is removed and reserved.

Subpart E—[Amended]

■ 38. Designate the subpart labeled ''Conversion Factors'' as subpart E.

Subpart F—[Amended]

■ 39. Designate the subpart labeled ''Quality Control'' as subpart F.

Subpart G—[Amended]

■ 40. Designate the subpart labeled ''Antitrust Immunity and Liability'' as subpart G.

■ 41. In part 989 all references of ''offgrade'' are revised to read ''off-grade''.

■ 42. In part 989 all references to ''nonnormal'' are revised to read ''non-normal''.

■ 43. In part 989 all references to ''committee'' are revised to read ''Committee''.

■ 44. In the list below, for each section indicated in the left column, remove the title indicated in the middle column from wherever it appears in the section, and add the title indicated in the right column:

Section	Remove	Add
989.58(d)	Processed Products Standardization and Inspection Branch.	Specialty Crops Inspection Division.
989.59(d)	Processed Products Standardization and Inspection Branch.	Specialty Crops Inspection Division.
989.102	Processed Products Branch, Fruit and Vegetable Division.	Specialty Crops Inspection Division.

Dated: September 19, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–20347 Filed 9–28–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0901; Product Identifier 2017–NM–106–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 757–300 series airplanes. This proposed AD was prompted by reports of scribe line damage on fuselage skin. This proposed AD would require detailed inspections of fuselage skin for the presence of scribe lines, and applicable on-condition actions. We are proposing this AD to address the unsafe condition on these products.

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

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0901.

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–2017–0901; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: David Truong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *david.truong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0901; Product Identifier 2017–NM–106–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

We have received a report indicating that scribe line damage, caused by sharp tools used during fuselage maintenance, has been found on the fuselage skin of a number of Boeing Model 757–300 series airplanes. This condition, if not corrected, could result in the development of cracks in fuselage skin that can potentially lead to rapid decompression and the inability of the principal structural element to sustain limit load.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 757–53A0107, dated July 20, 2017. The service information describes procedures for detailed inspections of fuselage skin for the presence of scribe lines, and applicable on-condition actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0107, dated July 20, 2017, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0901.

Costs of Compliance

We estimate that this proposed AD affects 37 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	Up to 149 work-hours × $85 per hour = $12,665 per inspection cycle.	$0	Up to $12,665 per inspection cycle.	Up to $468,605 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2017–0901; Product Identifier 2017–NM–106–AD.

(a) Comments Due Date

We must receive comments by November 13, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 757–300 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of scribe line damage on fuselage skin, caused by sharp tools used during fuselage maintenance. We are issuing this AD to detect and correct scribe line damage. Failure to detect and completely remove scribe lines may lead to fatigue cracking, rapid decompression, and inability of the principal structural element to sustain limit load.

(f) Compliance

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

(g) Required Actions

Except as required by paragraph (h) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–53A0107, dated July 20, 2017, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0107, dated July 20, 2017.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD, the phrase ''the effective date of this AD'' may be substituted for ''the original issue date of this service bulletin,'' as specified in Boeing Alert Service Bulletin 757–53A0107, dated July 20, 2017.

(2) Where Boeing Alert Service Bulletin 757–53A0107, dated July 20, 2017, specifies contacting Boeing, and specifies that action as RC: This AD requires repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(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 certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (h)(2) of this AD: For service information that contains steps that are labeled as RC, the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

(1) For more information about this AD, contact David Truong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *david.truong@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 20, 2017.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2017–20830 Filed 9–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number: 140905758–7736–01]

RIN 0607–AA54

Foreign Trade Regulations (FTR): Clarification on the Collection and Confidentiality of Kimberley Process Certificates

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Census Bureau (Bureau of the Census) proposes to amend its regulations in order to clarify that the data collected from the Kimberley Process Certificates (KPCs) are collected in compliance with the Clean Diamond Trade Act and not under the Census Bureau's laws and regulations. In addition, this rule clarifies the submission requirements and permissible uses of the KPCs.

DATES: Written comments must be received on or before November 28, 2017.

ADDRESSES: Please direct all written comments on this proposed rule to the Chief, International Trade Management Division, U.S. Census Bureau, Room 5K158, Washington, DC 20233–6010. You may also submit comments, identified by RIN number 0607–AA54 or by the e-Rulemaking Docket ID USBC–2017–0003, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example,

name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. The Census Bureau will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Dale C. Kelly, Chief, International Trade Management Division, U.S. Census Bureau, Room 5K158, Washington, DC 20233–6010, by phone (301) 763–6937, by fax (301) 763–8835, or by email [*dale.c.kelly@census.gov*].

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau is amending the Foreign Trade Regulations (FTR) (15 CFR, part 30) to clarify that the Kimberley Process Certificates (KPCs) are not collected under Title 13 of the United States Code. Instead, the KPCs are collected under the Clean Diamond Trade Act (CDTA) (Pub. L. 108–19, 19 U.S.C. 3901, *et seq.*) and Executive Order 13312, entitled ''Implementing the Clean Diamond Trade Act'' (68 FR 45151, July 29, 2003). The CDTA and Executive Order 13312 require that the importation into, and exportation from, the United States of any rough diamonds be controlled through the Kimberley Process Certification Scheme (KPCS). The KPCS calls on Participants (*i.e.* governments participating in the KPCS), including the United States, to ensure that any shipment of rough diamonds exported to, or imported from, a Participant be accompanied by a valid KPC, and maintain and publish statistics on the importation and exportation of rough diamonds. The CDTA further provides that the United States should produce statistics on imports and exports of rough diamonds and to make these statistics available for analysis by interested parties, including other governments participating in the KPCS.

Consistent with the CDTA, Executive Order 13312, and the KPCS, the Office of Foreign Assets Control's Rough Diamonds Control Regulations (Title 31 CFR, part 592) require that a shipment of rough diamonds imported into, or exported from, the United States be accompanied by an original KPC, and the Census Bureau's FTR requires that KPCs for all import and export shipments be provided to the Census Bureau. The data collected from the KPCs are separate and distinct from the statistical data collected under Title 13 of the United States Code, and are not governed by the confidentiality provisions of that title.

Finally, the U.S. Department of Homeland Security and the U.S. Department of State concur with the revisions to the FTR as required by 13 U.S.C. 303, and Public Law 107–228, division B, title XIV, section 1404.

Program Requirements

Consistent with the CDTA and Executive Order 13312, the Census Bureau is revising the FTR in CFR Title 15, part 30, in sections 30.1, 30.4, 30.7, 30.50, 30.60, and 30.70, as follows:

- Revise § 30.1(c) to add the definition ''Kimberley Process Certificate'' as a technical amendment.
- Revise § 30.1(c) to add the definition ''Voided Kimberley Process Certificate'' to clarify the term.
- Revise § 30.4 to add paragraph (e) to clarify the filing procedures for voided KPCs and to address that the collection of KPCs are not pursuant to Title 13, of the United States Code .
- Revise § 30.7(c) to clarify that KPCs must be provided to the Census Bureau immediately after export of the shipment from the United States.
- Revise § 30.50(c) to clarify that KPCs must be provided to the Census Bureau immediately after entry of the shipment in the United States.
- Revise § 30.60 to add a note clarifying that KPCs are not considered Electronic Export Information and are not confidential under Title 13 of the United States Code.
- Revise § 30.70 to clarify how violations of the CDTA will be enforced.

Rulemaking Requirements

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule will not have a significant impact on a substantial number of small entities. Currently, a KPC must be submitted for all imports or exports of rough diamonds. This rulemaking requires that KPCs be provided to the Census Bureau immediately after either entry in or export from the United States. It replaces the previous requirement to provide the KPC to the Census Bureau in advance.

This action requires that U.S. Principal Parties in Interest (USPPIs) or authorized agents in the United States file export information to the Automated Export System (AES) for all shipments where an Electronic Export Information (EEI) record is required under the FTR. The SBA's table of size standards indicates that businesses that are the USPPI or authorized agent and file export information are considered small businesses if they employ less than 500 people. Based on Exhibit 7a of the 2015 *Profile of U.S. Exporting Companies,* the Census Bureau estimates that there are 295,000 USPPIs that are considered small business entities under the SBA definition. And more than 90 percent of these USPPIs use an authorized agent to file export information. An estimate of the number of authorized agents is not known and is unable to be determined.

The Census Bureau anticipates that the clarification of requirements will not significantly affect the small businesses that file through the AES. The majority of agents require use of a computer to perform routine tasks, such as filing through the AES. These agents are unlikely to be significantly affected by these clarifications of requirements, as they already possess the necessary technology and equipment to submit the information through the AES. In addition, it is not necessary for small businesses to purchase software for this task because a free Internet-based system, AES*Direct,* is provided for the electronic submission of export information. The proposed new requirements will have minimal impact on response burden. For these reasons, this rule will not have a significant economic impact on a substantial number of small entities.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule is not an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866. This rulemaking does not contain policies with federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. This rule contains a collection-of-information subject to the requirements of the PRA (44 U.S.C. 3501 *et seq.*) and that has been approved under OMB control number 0607–0152.

List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Census Bureau is proposing to amend Title 15, CFR part 30, as follows:

PART 30—FOREIGN TRADE REGULATIONS

■ 1. The authority citation for 15 CFR part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization plan No. 5 of 1990 (3 CFR 1949–1953 Comp., p. 1004); Department of Commerce Organization Order No. 35–2A, July 22, 1987, as amended, and No. 35–2B, December 20, 1996, as amended; Pub. L. 107–228, 116 Stat. 1350.

■ 2. Amend § 30.1(c) by adding definitions for ''Kimberley Process Certificate (KPC)'' and ''Voided Kimberley Process Certificate'' to read as follows:

§ 30.1 Purpose and definitions.

* * * * *

(c) * * *

Kimberley Process Certificate (KPC). A forgery resistant document used to certify the origin of rough diamonds from sources which are free of conflict.

* * * * *

Voided Kimberley Process Certificate. A Kimberley Process Certificate intended to be used for the exportation of rough diamonds from the United States that has been cancelled for reasons such as loss or error.

* * * * *

■ 3. Amend § 30.4 by adding paragraph (e) to read as follows:

§ 30.4 Electronic Export Information filing procedures, deadlines, and certification statements.

* * * * *

(e) Collection of KPCs and voided KPCs. Any voided KPC must be faxed by the voiding party to the Census Bureau on (800) 457–7328, or provided by other methods as permitted by the Census Bureau immediately upon voiding. The collection of KPCs, including voided KPCs, is performed pursuant to the Clean Diamond Trade Act, Public Law 108–19, 19 U.S.C. Section 3901 *et seq.* (CDTA) and Executive Order 13312, and not Title 13, U.S.C.

■ 4. Amend § 30.7 by revising paragraph (c) to read as follows:

§ 30.7 Annotating the bill of lading, air waybill, or other commercial loading documents with proof of filing citations, and exemption legends.

* * * * *

(c) Exports of rough diamonds classified under HS subheadings 7102.10, 7102.21, 7102.31 require the proof of filing citation, as stated in paragraph (b) of this section, to be indicated on the Kimberley Process Certificate (KPC). In addition, the KPC must be faxed to the Census Bureau on (800) 457–7328, or provided by other methods as permitted by the Census Bureau, immediately after export of the shipment from the United States.

■ 5. Amend § 30.50 by revising paragraph (c) to read as follows:

§ 30.50 General requirements for filing import entries.

* * * * *

(c) The Kimberley Process Certificate (KPC) for all imports of rough diamonds classified under HS subheadings 7102.10, 7102.21, 7102.31 must be faxed by the importer or customs broker to the Census Bureau on (800) 457–7328, or provided by other methods as permitted by the Census Bureau, immediately after entry of the shipment in the United States.

■ 6. Amend § 30.60 by adding a note to read as follows:

§ 30.60 Confidentiality of Electronic Export Information.

* * * * *

Note to § 30.60: Kimberley Process Certificates (KPCs), including voided KPCs, provided to the Census Bureau pursuant to the Clean Diamond Trade Act, Executive Order 13312, and this Part are not considered EEI and are not confidential under Title 13.

■ 7. Amend § 30.70 by revising the introductory text to read as follows:

§ 30.70 Violation of the Clean Diamond Trade Act.

Section 8(c) of the Clean Diamond Trade Act (CDTA) authorizes U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) to enforce the laws and regulations governing exports of rough diamonds. The Treasury Department's Office of Foreign Assets Control's (OFAC) also has enforcement authority pursuant to section 5(a) of the CDTA, Executive Order 13312, and Rough Diamonds Control Regulations (31 CFR 592). CBP, ICE, and the OFAC are authorized to enforce provisions of the CDTA that provide for the following civil and criminal penalties:

* * * * *

Dated: September 22, 2017.

Ron S. Jarmin,

Associate Director for Economic Programs, Performing the Non-Exclusive Functions and Duties of the Director, Bureau of the Census.

[FR Doc. 2017–20920 Filed 9–28–17; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 771 and 774

Federal Railroad Administration

49 CFR Part 264

Federal Transit Administration

49 CFR Part 622

[Docket No. FHWA–2015–0011]

FHWA RIN 2125–AF60
FRA RIN 2130–AC64
FTA RIN 2132–AB26

Environmental Impacts and Related Procedures

AGENCY: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This SNPRM provides interested parties the opportunity to comment on the proposed revisions to the FHWA and FTA joint regulations implementing the National Environmental Policy Act (NEPA) and Section 4(f) requirements. The FHWA, FRA, and FTA (hereafter referred to as ''the Agencies'') propose these revisions after the enactment of the Fixing America's Surface Transportation (FAST) Act, which requires a rulemaking to address programmatic approaches in environmental reviews and makes other changes to existing law that should be addressed in a rulemaking. In this SNPRM the Agencies also propose to add FRA to regulations governing environmental impact and related procedures and the parks, recreation areas, wildlife and waterfowl refuges, and historic site, making those regulations FRA's NEPA implementing procedures and FRA's Section 4(f) implementing regulations, respectively. This SNPRM proposes to modify the FHWA/FTA Environmental Impact and Related Procedures due to changes to the environmental review process made by the FAST Act and to modify the Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites regulations due to new exceptions created by the FAST Act. Lastly, the Agencies request comments regarding the current FHWA and FTA definition of ''existing operational right-of-way'' in their respective categorical exclusion sections. The Agencies seek comments on the proposals in this document.

DATES: The Agencies must receive comments on or before November 28, 2017.

ADDRESSES: To ensure you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m.–5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

Instructions: You must include the agency name and docket number or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For FHWA: Neel Vanikar, Office of Project Delivery and Environmental Review, HEPE, (202) 366–2068, *Neel.Vanikar@dot.gov,* or Diane Mobley, Office of the Chief Counsel, (202) 366–1366, *Diane.Mobley@dot.gov.* For FRA: Michael Johnsen, Office of Program Delivery, (202) 493–1310, *michael.johnsen@dot.gov,* or Christopher Van Nostrand, Office of Chief Counsel, (202) 493–6058, *Christopher.Vannostrand@dot.gov.* For FTA: Megan Blum, Office of Planning and Environment, (202) 366–0463, *Megan.Blum@dot.gov,* or Helen Serassio, Office of Chief Counsel, (202) 366–1974, *Helen.Serassio@dot.gov.* The Agencies are located at 1200 New Jersey Ave. SE., Washington, DC 20590–0001. Office hours are from 8:00 a.m. to 4:30 p.m. E.T., 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). The FAST Act contains new requirements the Agencies must follow to comply with NEPA (42 U.S.C. 4321 *et seq.*) and Section 4(f) (23 U.S.C. 138 and 49 U.S.C. 303). This SNPRM includes proposed changes to 23 CFR part 771 to address the following issues: (1) Section 1304(k) which requires a rulemaking regarding programmatic approaches; (2) certain amendments to 23 U.S.C. 139 made by section 1304; and (3) the section 11503 requirement that the Secretary of Transportation (Secretary) apply, to the greatest extent feasible, the project development procedures described in 23 U.S.C. 139 to railroad projects requiring the Secretary's approval under NEPA (49 U.S.C. 24201(a)). With respect to 23 CFR part 774, the SNPRM includes proposed changes to the Agencies' Section 4(f) procedures to reflect the two new Section 4(f) exceptions created in the FAST Act (sections 1303 and 11502). In addition, FRA also proposes joining 23 CFR part 774.

General Discussion of the Proposals

The following sections of the FAST Act affect 23 CFR parts 771 and 774, and are addressed in this SNPRM:

- Section 1303 amends Section 4(f) to create an exception for certain common post-1945 concrete or steel bridges and culverts;
- Section 1304 revises certain elements of the Agencies' environmental review process at 23 U.S.C. 139;
- Section 1304(k) replaces a rulemaking requirement created by the *Moving Ahead for Progress in the 21st Century Act* (MAP–21), Public Law 112–141, 126 Stat. 405, with a new rulemaking requirement to implement the programmatic approaches provision in 23 U.S.C. 139(b)(3);
- Section 11502 amends Section 4(f) to create a railroad or rail transit line exception when certain conditions are met; and,
- Section 11503 requires the Secretary apply, to the greatest extent feasible, the project development procedures described in 23 U.S.C. 139 to railroad projects requiring the Secretary's approval under NEPA.

SNPRM Rationale

This SNPRM supplements the notice of proposed rulemaking (NPRM) FHWA and FTA issued on November 20, 2015 (November 2015 NPRM) (80 FR 72624, Docket No. FHWA–2015–0011). The November 2015 NPRM proposed changes to the FHWA/FTA Environmental Impact and Related Procedures regulations (23 CFR part 771) and the Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Site regulations (23 CFR part 774). Primarily, FHWA and FTA issued the November 2015 NPRM to address certain changes to the environmental review process imposed by MAP–21.

The comment period for the November 2015 NPRM closed on January 19, 2016. The FHWA and FTA received 14 comment letters for consideration. During the November 2015 NPRM comment period, President Obama signed the FAST Act into law. The FHWA and FTA did not pursue a final rule following the November 2015 NPRM because certain FAST Act provisions affected portions of the regulatory provisions addressed in the November 2015 NPRM and because certain other FAST Act provisions are appropriately addressed in a rulemaking. The Agencies now propose addressing those changes to parts 771 and 774 in this SNPRM.

The Agencies used the proposals in the November 2015 NPRM as the baseline for this SNPRM (*e.g.,* section/paragraph organization and language). All substantive comments received on the November 2015 NPRM and this SNPRM, as well as the appropriate responses to both sets of comments, will be addressed in a final rule should a final rule be issued. The docket contains a redline that captures both the November 2015 NPRM and this SNPRM's changes.

This SNPRM contains proposals satisfying the rulemaking requirements in FAST Act sections 1304(k) and 11503, and addresses changes to 23 U.S.C. 139 (Efficient Environmental Reviews for Project Decisionmaking), 23 U.S.C. 138 (Preservation of Parklands), and 49 U.S.C. 303 (Policy on Lands, Wildlife and Waterfowl Refuges, and Historic Sites) FAST Act sections 1304, 1303, and 11502 made, respectively. The SNPRM also proposes to add FRA to parts 771 and 774.

Applicability of 23 CFR Part 771 to FRA Actions

Section 11503 of the FAST Act requires the Secretary, among other things, to apply, to the greatest extent feasible, the project development procedures described in 23 U.S.C. 139 (Efficient Environmental Reviews for Project Decisionmaking) to railroad projects requiring the Secretary's approval under NEPA. The Secretary must incorporate into FRA regulations and procedures for railroad projects aspects of the 23 U.S.C. 139 project development procedures, or portions thereof, that increase the efficiency of the review of railroad projects consistent with section 11503.

The FRA has determined that applying 23 CFR part 771 to railroad actions is the most efficient way to comply with section 11503. By joining part 771, FRA would not need to develop entirely new NEPA regulations for railroads projects. On June 9, 2016, FRA published a notice in the **Federal Register** requesting public comment on the application of part 771 to FRA's

railroad projects (81 FR 37237, June 9, 2016). The comment period ended on July 11, 2016. The FRA received one comment on this notice from the Association of American Railroads (AAR). The commenter suggested that FRA develop its own regulations rather than adopt 23 CFR part 771 because of perceived difficulties applying certain requirements to freight railroad projects on privately owned infrastructure. While many of the FHWA and FTA actions are sponsored by government entities (*e.g.,* State DOTs), the regulations can be applied to the actions on privately owned railroad infrastructure. This SNPRM proposes certain modifications to 23 CFR part 771 to accommodate railroad projects.

Section 11503 of the FAST Act also required FRA to survey its use of NEPA categorical exclusions (CE) in railroad projects since 2005. On June 2, 2016, FRA published a notice in the **Federal Register** providing the public with a review of FRA's survey, requesting comments on two new classes of actions that might be appropriate for categorical exclusion, and requesting suggestions for additional categories of activities appropriate for exclusion (81 FR 35437, June 2, 2016) (June Notice). The comment period ended on July 5, 2016. The FRA received comments from the AAR, the Michigan Department of Transportation and the Oregon Department of Transportation which are addressed in the section-by-section analysis below. This SNPRM satisfies the FAST Act section 11503 requirement that the Secretary publish an NPRM proposing new and existing CEs for railroad projects requiring the Secretary's approval.

The FRA proposes to join the 23 CFR part 774 regulations implementing Section 4(f). FRA determined joining 23 CFR part 774 would further align its environmental review processes with the FHWA and FTA processes. This would create consistency implementing Section 4(f) and provide clarity to FRA's applicants and project sponsors. Additionally, it eliminates FRA's need to update the Section 4(f) sections of its existing Environmental Procedures; if FRA only joined 23 CFR part 771, the part 771 regulations would supersede most, if not all, of FRA's Environmental Procedures, and FRA would still need to revise the Section 4(f) sections. In addition, FRA currently follows 23 CFR part 774 and associated FHWA and FTA guidance as guidance when it applies Section 4(f) to railroad projects and officially joining the regulations would not significantly change FRA's current practice. In the future, DOT may consider proposing a Department-wide rule or updating Department-wide guidance on the implementation of Section 4(f).

This SNPRM would also amend part 264 in title 49 to add a cross reference 23 CFR part 771 and 23 CFR part 774, and the Agencies propose changing the heading to ''Environmental Impact and Related Procedures.''

Section-by-Section Discussion of the Proposals

NEPA Regulation Changes (Part 771)

General

There are two general proposals to note. First, the Agencies propose to list the Agencies in alphabetical order (*e.g.,* ''FHWA, FRA, and FTA'') whenever it is necessary to list all three agencies. This change would apply throughout the regulation. Second, the Agencies propose ''final EIS'' as the acronym for ''final environmental impact statement'' (instead of ''FEIS'') throughout 23 CFR part 771 to provide consistency.

Section 771.101 Purpose

The Agencies propose to modify this section to add the appropriate references to FRA and railroad projects, which would allow FRA to use part 771 as its procedures for implementing NEPA. The Agencies also propose updating the list of references in the last sentence to remove MAP–21 section 1319 because it was codified at 23 U.S.C. 139(n) and 49 U.S.C. 304a, and to add FAST Act section 1304.

Section 771.105 Policy

Through the November 2015 NPRM, FHWA and FTA proposed several revisions to 23 CFR part 771 to satisfy the programmatic approaches rulemaking requirement created by MAP–21, section 1305. To satisfy the programmatic approaches rulemaking requirement created by FAST Act, section 1304(k), the Agencies propose revising paragraph (b), originally proposed in the November 2015 NPRM, by including the parenthetical ''(including the requirements found at 23 U.S.C. 139(b))'' after the words ''environmental requirements.''

The Agencies also propose a non-substantive change to paragraph (e)(2) in the first sentence to correct a typo (''fo'' to ''of'').

The Agencies are proposing to revise § 771.105 to directly address 23 U.S.C. 139(d)(8)-Single NEPA Document, which requires the Agencies develop a single NEPA document that can be used for all Federal permits and reviews for a project to the maximum extent practicable and consistent with Federal law. The Agencies propose revising paragraph (a) by replacing ''to the fullest extent possible'' with ''to the maximum extent practicable and consistent with Federal law'' to reflect 23 U.S.C. 139(d)(8) language. The policy statement applies broadly to the environmental review process and specifically encourages all environmental reviews and requirements (including permits) be addressed in a single process and environmental review document.

Section 771.107 Definitions

The Agencies propose to modify three definitions to add FRA's railroad projects. Specifically, the Agencies propose adding ''railroad'' projects, ''FRA,'' and ''rulemakings'' to the list of examples of major Federal actions in the definition of ''Action,'' and the Agencies propose adding ''FRA'' in all locations where FHWA and FTA are listed in the definition of ''Administration.'' The Agencies also propose similar changes to the definition of ''Administration action'' by adding ''FRA'' approval, and ''rulemakings'' to the list of activities needing Agency approval.

Section 771.109 Applicability and Responsibilities

In paragraph (a)(1), the Agencies propose to clarify that the part 771 regulations and the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) apply where one of the Agencies exercises sufficient control to condition an approval, not just a ''permit or project approval,'' by including ''other'' prior to ''approvals'' (*i.e.,* ''. . . condition the permit, project, or other approvals''). The Agencies are proposing this change to accommodate FRA's potential actions related to its safety programs.

The Agencies are not proposing to modify paragraph (a)(3) to specifically address when the regulations would apply to FRA projects. The FRA would apply these regulations to projects initiated (through publishing a notice of intent for an environmental impact statement or determining to initiate an environmental assessment) after the Agencies issue a final rule, if one is issued. Until such time, FRA will continue to follow its Procedures for Considering Environmental Impacts (Environmental Procedures) (64 FR 28545, May 26, 1999, updated 78 FR 2713, Jan. 14, 2013). However, as required by the FAST Act, FRA will also follow the project development procedures described in 23 U.S.C. 139 for its railroad projects initiated after December 4, 2015 unless the project is subject to a funding arrangement under

title 49, U.S.C. the Secretary approved before December 4, 2015.

In paragraph (b)(1), the Agencies propose to add ''FRA'' as an agency that will assure implementation of committed mitigation measures by including the mitigation measures by reference in the grant agreement, followed by reviews of design and construction inspections.

In paragraph (c)(2), FRA added reference to FRA's financial assistance programs.

In paragraph (c)(7), the Agencies propose several revisions to reflect changes to participating agencies' responsibilities under section 1304 of the FAST Act, codified at 23 U.S.C. 139(c)(6), (d)(9), (f)(4), and (g)(1). Section 139(c)(6)(C) requires the lead agency consider and respond to comments within a participating agency's special expertise or jurisdiction. Similarly, section 139(d)(9) requires participating agencies to provide comments, responses, studies, or methodologies within the agency's special expertise or jurisdiction, and to use the process to address its environmental issues of concern. Section 139(f)(4)(A)(ii) mandates participating agencies limit their agency's comments to the subject matter areas within their agency's special expertise or jurisdiction, to the maximum extent practicable and consistent with Federal law. Lastly, section 139(g)(1)(B) now requires the coordination plan that the lead agency develops under 23 U.S.C. 139 include a schedule, which must receive participating agency concurrence.

In response to these changes to 23 U.S.C. 139, the Agencies propose adding that participating agencies are responsible for providing input within their agency's special expertise or jurisdiction and providing concurrence on the schedule that now must be included in the coordination plan. The Agencies propose paragraph (c)(7) reads as set out in the regulatory text below. The Agencies interpret the proposed language ''providing input, as appropriate'' to include the requirement at 23 U.S.C. 139(d)(9) that participating agencies' input include ''comments, responses, studies, or methodologies on those areas within the special expertise or jurisdiction of the agency'' and, therefore, did not specifically list those activities in this paragraph or elsewhere in the regulation. The Agencies determined that listing those four specific activities is unnecessarily limiting and could lead a project sponsor to believe an unlisted method of providing input is not permitted.

The Agencies further propose adding a new paragraph (e), which describes FRA's requirements for third party contracting where the project sponsor is a private entity and there is no qualified applicant as defined in § 771.107. In that situation, FRA proposes to require third party contracting for all EISs and may also require them for EAs. When using a third party contract, the project sponsor retains a contractor to assist FRA in conducting the environmental review, and the contractor works under the direction, supervision and control of FRA. A third party contracting structure would be memorialized in a memorandum of understanding among FRA, the contractor, and the project sponsor. This paragraph is intended to ensure compliance with FRA's responsibilities for EIS preparation in the CEQ implementing regulations at 40 CFR 1506.5(c).

The Agencies propose an associated change to the beginning of paragraph (b)(6), which addresses the role of a project sponsor that is a private entity. The proposed change reads, ''Subject to paragraph (e).''

Section 771.111 Early Coordination, Public Involvement, and Project Development

The Agencies propose several additions to § 771.111 to reflect various FAST Act changes to 23 U.S.C. 139. To reflect planning and environmental tools not previously listed, the Agencies propose adding references to 23 U.S.C. 139(f) (Purpose and need; alternatives analysis) and 23 U.S.C. 169 (Development of programmatic mitigation plans) to the list in paragraph (a)(2)(i). Section 139(f)(4)(E) of title 23 U.S.C. establishes a new process for reducing duplication between the planning and NEPA evaluation of alternatives processes by eliminating planning alternatives from detailed consideration under NEPA when certain conditions are met. Section 169 of title 23 U.S.C. includes an optional framework for creating programmatic mitigation plans during the transportation planning process, and gives substantial weight to programmatic mitigation plans in the environmental review process. Note that a recent final rule (81 FR 34049, May 27, 2016; Docket No. FHWA–2013–0037) modified 23 CFR part 450, which implements 23 U.S.C. 168 and 169. Please visit the docket for more information regarding specific changes to the planning and environmental linkages processes. The Agencies also added ''as applicable'' to paragraph (a)(2)(i) to acknowledge the three Agencies may have different processes or requirements authorized by statute among themselves. For example, 23 U.S.C. 139 applies to FRA, but 23 U.S.C. 168 does not.

The Agencies propose adding the requirement that a lead agency, in consultation with participating agencies, will develop an environmental checklist, as appropriate, to assist in resource and agency identification to the end of paragraph (a)(3) to reflect the new environmental checklist language found at 23 U.S.C. 139(e)(5). The Agencies interpret the statutory language in 23 U.S.C. 139(e)(5)(A) (''The lead agency for a project . . . shall develop, as appropriate, a checklist to help project sponsors identify potential natural, cultural, and historic resources . . . .'') as providing flexibility through the phrase ''as appropriate.'' The Agencies are, therefore, proposing ''will develop an environmental checklist, as appropriate'' to reflect the statutory flexibility that allows lead agencies, including project sponsors, to develop environmental checklists when needed to facilitate the environmental process.

The Agencies propose renumbering existing paragraph (b) as (b)(1) and adding a new paragraph (b)(2). Proposed paragraph (b)(2) would state that for projects to be evaluated with an EIS, the Administration will respond in writing to a project sponsor's formal project notification within 45 days of receipt. This to respond to the new ''review of application'' paragraph at 23 U.S.C. 139(e)(3), which builds off the existing project notification process established under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users (SAFETEA–LU). The Agencies identify EISs in the proposed language because the procedures outlined in 23 U.S.C. 139 are ''applicable to all projects for which an [EIS] is prepared under [NEPA]'' (23 U.S.C. 139(b)(1)). The Agencies may apply the section 139 procedures to other classes of projects on a case-by-case basis but section 139 is only required for EISs, and the Agencies want to underscore that fact.

In paragraph (c), the Agencies propose adding that a project sponsor may request the Secretary to designate the lead Federal agency when project elements fall within multiple DOT agencies' expertise. This addition responds to 23 U.S.C. 139(e)(4), but adds clarity regarding the provision's applicability. In most instances, the Agencies expect project sponsors will continue to contact FHWA, FRA, or FTA to determine the Federal lead agency, as is current practice.

The Agencies propose building on the existing language regarding cooperating

and participating agency invitations in paragraph (d) by adding timing language for those agencies' identification. The Agencies would require that the lead agencies identify participating agencies within 45 days from publication of the notice of intent at the end of paragraph (d) to address the new requirement to identify participating agencies within 45 days at 23 U.S.C. 139(d)(2).

The Agencies propose adding a reference to FRA programs to paragraph (i) and its subordinate paragraphs, clarifying that FRA is adopting the approach that applicants in FTA's capital assistance programs use to engage the public. The Agencies also propose to add a reference to ''the scope of the NEPA analysis'' as an issue that the public or agencies might comment on during the 30-day period following the publication of a Notice of Intent.

Additionally, the Agencies propose replacing ''NEPA documents'' with ''environmental documents'' in paragraph (i)(3) to be consistent with 40 CFR 1508.10. CEQ uses the term ''environmental document'' to refer to EIS, EA, finding of no significant impact, and record of decision documents broadly, which also is the Agencies' intent in paragraph (i)(3).

The Agencies propose to add FRA's contact information to paragraph (j).

Section 771.113 Timing of Administration Activities

In paragraph (a), the Agencies propose to add the word ''environmental'' before the word ''studies'' for consistency with the term's use in the regulation.

The Agencies propose to add paragraph (d)(4), which would create an FRA-specific exemption to the paragraph (a)(1) prohibition on proceeding with final design activities, property acquisition, purchase of construction materials or rolling stock, or project construction until the NEPA process is complete. The proposal is consistent with FRA policy and allows FRA to makes certain case-by-case exceptions for the purchase of railroad components or materials that can be used in other projects or resold. This is not a blanket exemption, and FRA would make case-by-case determinations based on the information available at the time to ensure such activities would not improperly influence the outcome of the NEPA process.

Section 771.115 Classes of Actions

In paragraph (a)(4), the Agencies propose to change ''highway facility'' to ''transportation right-of-way'' for consistency in this section and across modes. This change is not meant to change the meaning of the term.

The Agencies propose to add paragraph (a)(6), which would provide examples of FRA actions it finds normally require an EIS. Under this proposal, FRA would typically prepare an EIS for ''new construction of major railroad lines or facilities (*e.g.,* terminal passenger stations, freight transfer yards, or railroad equipment maintenance facilities) that will not be located within an existing transportation right-of-way.'' These examples are generally consistent with FRA's existing NEPA procedures and also the examples of FHWA and FTA actions normally requiring an EIS.

In paragraph (b), the Agencies propose to add a reference to FRA's CEs in section 771.116.

Section 771.116 FRA Categorical Exclusions

The Agencies propose to add a new § 771.116. Although the Agencies collectively propose to add this section, the development of the proposed CEs for each Agency is based on each Agency's particular mission and programs, unique experiences, and existing lists of CEs. As a result, this section focuses on FRA's proposed CEs. One commenter suggests that DOT have one uniform set of CEs and identified specific FHWA CEs that FRA should adopt for its railroad projects. Typically, DOT operating administrations (OA) identify categories of actions appropriate for categorical exclusion based on the individual OA's experience. The FRA has identified and substantiated this proposed list of CEs based on its experience with these categories of actions. However, since many of the FHWA, FRA, and FTA actions are often similar, the actions may be covered in each OA's CE list but with appropriate differences reflecting the experiences of the OAs. Additionally, 49 U.S.C. 304 authorizes the use by one OA of another OA's CE in certain multimodal situations.

Paragraph (a) of this section proposes to adopt the current text of §§ 771.117(a) and 771.118(a), as modified to apply to FRA. This proposed paragraph would define a CE as an action meeting the definition in the CEQ regulation and, based on FRA's past experience, does not involve significant environmental impacts. Paragraph (b) of this section proposes to describe the circumstances FRA would use to determine whether an activity, normally meeting the requirements of a CE, would require further environmental study. The FRA's proposal to adopt the FTA and FHWA list of unusual circumstances addresses a comment recommending FRA redraft its existing list of circumstances requiring further environmental study (Environmental Procedures, section 4(e)). Proposed paragraph (b) clearly articulates the circumstances requiring further environmental study for FRA's railroad projects and provides consistency with FHWA and FTA.

One commenter suggests FRA identify a subset of CEs that require documentation and those that do not need ''further NEPA approvals by FRA.'' The FRA understands this comment as a suggestion to adopt a ''(c)'' and ''(d)'' list similar to those used by FHWA and FTA. The FRA considered this approach but does not propose to distinguish between different classes of CEs and will instead continue to use one comprehensive list and decide the appropriate standards for documentation on a project-by-project basis.

Paragraph (c) of this section proposes to include the activities for categorical exclusion. The proposed list of activities in paragraph (c) is based on the CEs identified in FRA's Environmental Procedures, including those CEs added in 2013. Since 2013, FRA has conducted an internal review of its CEs to ensure their continued appropriate use and usefulness. Based on FRA's internal review and the comments received on the June Notice, paragraph (c) of this section proposes to make minor edits to several of the existing CEs; to eliminate unnecessary or duplicative CEs; and to add two new CEs.

Support for FRA's proposals is included in a CE substantiation document. The CE substantiation document relies on internal FRA expert opinion, FRA's experience managing projects and other activities related to railroad safety and infrastructure development, and FRA's review of similar CEs used by other DOT OAs and other Federal agencies (often referred to as ''comparative benchmarking''). For additional information, including a description of the CEs FRA proposes to eliminate, please see the CE substantiation document, which FRA has included in the docket for public review. The following discussion focuses on the proposed new CEs and those FRA proposes to modify.

Paragraph (c) proposes no changes to the following CEs (as compared to FRA's current Procedures for Considering Environmental Impacts): Paragraph (c)(2) covering personnel actions; paragraph (c)(6) covering rulemakings issued under section 17 of the Noise Control Act of 1972; paragraph (c)(8) covering hearings, meetings, or public affairs activities;

paragraph (c)(16) covering alterations to existing facilities, locomotives, stations, and rail cars to make them accessible for the elderly and persons with disabilities; paragraph (c)(19) covering the installation, repair and replacement of equipment and small structures designed to promote transportation safety, security, accessibility, communication or operational efficiency; paragraph (c)(22) covering the assembly or construction of facilities or stations; and paragraph (c)(23) covering track and track structure maintenance and improvements.

Proposed paragraph (c)(1) provides a CE addressing administrative procurements, contracts for personal services, and training. Proposed paragraph (c)(3) modifies an existing FRA CE by adding ''training'' to the list of covered activities.

Proposed paragraph (c)(3) provides a CE addressing planning or design activities that do not commit FRA to a particular course of action affecting the environment. Proposed paragraph (c)(3) is a modification of an existing FRA CE as it eliminates the limitation that the planning or design activity must be funded through FRA's financial assistance or FRA's own procurement process.

Proposed paragraph (c)(4) provides a CE addressing localized geotechnical and other investigations that provide information for preliminary design and for environmental analyses and permitting purposes, such as: Drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys. This proposed CE covers investigations and surveys that inform environmental analyses and preliminary engineering for rail projects. These activities include geotechnical, geophysical, and other subsurface investigations, pedestrian and ground disturbing archaeological surveys and testing to determine eligibility for the National Register of Historic Places, and wetland surveys for purposes of wetland delineation or jurisdictional determinations. In FRA's experience, the impacts of these activities are generally minor in nature and any impacts are localized to the investigation or survey sites. This CE is consistent with existing FHWA and FTA CEs at 23 CFR 771.117(c)(24) and 23 CFR 771.118(c)(16), respectively. FRA identified these activities as potentially appropriate for categorical exclusion in the June Notice. The FRA received one comment supporting this CE.

Proposed paragraph (c)(5) provides a CE addressing internal orders, policies, and procedures that FRA is not required to publish in the **Federal Register** under the Administrative Procedure Act, 5 U.S.C. 552(a)(1). This proposed CE is similar to an existing FRA CE. However, proposed paragraph (c)(5) would add ''policies'' to the list of activities covered by the CE.

Proposed paragraph (c)(7) provides a CE addressing the provision of financial assistance for a project where the financial assistance would fund a completed activity. For example, FRA may be involved in projects where an applicant requests financial assistance to refinance a loan. In that case, the agency's decision is merely a financial transaction that would not itself lead to any environmental impacts. The FRA identified these activities as potentially being appropriate for categorical exclusion in the June Notice. FRA received one comment supporting this CE.

Proposed paragraph (c)(9) provides a CE addressing maintenance or repair of existing railroad equipment. The proposed CE is a modified version of an existing FRA CE. Specifically, paragraph (c)(9) would move the phrase ''existing railroad facilities'' to the beginning of the CE. This clarifies that the list including equipment; track and bridge structures; and electrification, communication, signaling or security facilities are non-exclusive examples of existing railroad facilities. Paragraph (c)(9) would also clarify the scope of the CE to include ''repair'' activities. In FRA's experience, the scope of the potential impacts resulting from repair activities is generally similar to those that might occur during routine maintenance. The primary difference between the two is that unlike maintenance, repair activities may not occur on a regular or reoccurring basis. Paragraph (c)(9) would also remove the definition of maintenance because it is unnecessary. One commenter suggests modifying paragraph (c)(9) to add a reference to right-of-way in the definition of ''maintenance.'' However, this modification is unnecessary since FRA's proposal would eliminate the definition of maintenance.

Proposed paragraph (c)(10) provides a CE addressing the emergency repair or replacement of an essential rail facility damaged by a natural disaster or catastrophic failure. This proposed CE is similar to an existing FRA CE; however, proposed paragraph (c)(10) would clarify that repairs following an emergency are also covered by the CE; define repair and replacement to include reconstruction, restoration, or retrofitting; clarify that when conducting the repair and replacement, the rail facility may be upgraded as necessary to meet existing codes and standards; remove the unnecessary limitation that the CE apply only to ''temporary'' replacements; and remove the reference to the immediacy of the repairs in relation to the disaster or catastrophic failure. One commenter suggests that FRA adopt the ''emergency repairs'' CE applied by FHWA and FTA at 23 CFR 771.117(c)(9) and 23 CFR 771.118(c)(11), respectively. In this SNPRM, FRA proposes modifications to its existing emergency repair CE, including the incorporation of relevant language and concepts from 23 CFR 771.117(c)(9) and 23 CFR 771.118(c)(11).

Proposed paragraph (c)(11) provides a CE addressing operating assistance to a railroad to continue existing service or an increase in service to meet demand. This proposed CE is similar to an existing FRA CE. The existing CE applies if the assistance will not result in a change in the impact or effect to the environment whereas proposed paragraph (c)(11) would modify the CE to focus on whether the project would result in significant changes to traffic density. The FRA finds focusing on change in traffic density for a CE covering operating assistance is more appropriate than the current imprecise limitation that the assistance will not result in a change in the effect on the environment.

One commenter suggests revising proposed paragraph (c)(12) by removing the word ''minor'' before ''rail line additions,'' adding the phrase ''or within existing right-of-way,'' and modifying the CE's limitations by adding the requirement that the project can be constructed in less than 6 months and substantially within the existing right-of-way, and will not have additional significant environmental impacts beyond the existing rail yard or existing right-of-way. The FRA will not adopt the suggested change to remove ''minor'' because FRA cannot substantiate such an expansion of the CE. However, FRA proposes to adopt the suggested phrase ''or within existing right-of-way'' since it is consistent with the current scope of the CE and appropriately limits construction to within the existing right-of-way. The FRA also proposes to keep its existing limitations (*i.e.,* ''[the] additions are not inconsistent with existing zoning, do not involve acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail lines or rail facilities.'') which are consistent with FRA's experience with railroad projects rather than adopt the

commenter's suggestion which unnecessarily narrows the applicability of the CE.

Proposed paragraph (c)(13) provides a CE addressing the acquisition, transfer and right to use real property and certain railroad infrastructure. The proposed CE would modify an existing version of this FRA CE by eliminating the reference to ''existing railroad equipment'' because acquisition of equipment would be covered by the CE proposed in paragraph (c)(18). Proposed paragraph (c)(13) also would allow the acquisition of ''real property.'' The FRA proposes this addition because acquisition alone does not impact the environment. In addition, the proposed CE would move the phrase ''existing railroad facilities'' to the beginning of the CE to clarify that the list including equipment; track and bridge structures; and electrification, communication, signaling or security facilities are non-exclusive examples of existing railroad facilities. This is also consistent with the proposed structure of paragraph (c)(9). The proposed paragraph (c)(13) would also add ''transfer'' to the list of covered activities to accommodate potential FRA involvement in the transfer of real property or existing railroad facilities. This is consistent with an FTA CE at 23 CFR 771.118(c)(6).

Proposed paragraph (c)(14) provides a CE addressing research, development, and demonstration activities. This proposed CE is similar to an existing FRA CE. However, proposed paragraph (c)(14) would expand the scope of the existing CE to include research, development, and demonstration activities beyond the development of signal, communication, or train control systems. While in the past this CE was almost exclusively used for the testing of train control systems, including Positive Train Control, FRA funds other research, development, and demonstration activities similar in scope, but involving different rail systems or infrastructure, are also appropriate for categorical exclusion.

Proposed paragraph (c)(15) provides a CE addressing the promulgation of rules, the issuance of policy statements, the waiver of modification of existing regulatory requirements, and discretionary approvals. This proposed CE is similar to an existing FRA CE; however, proposed paragraph (c)(15) would add the waiver or modification of existing regulatory requirements and discretionary approvals, and remove the limitation that these activities be related to railroad safety. This proposed CE would retain the existing limitation for increases in environmental impacts and would not be used if FRA finds the activity would significantly increase emissions of air or water pollutants or noise. However, FRA proposes striking the clause in the existing CE reading ''or increased traffic congestion in any mode of transportation.''

Proposed paragraph (c)(17) provides a CE addressing rehabilitation, reconstruction, removal, construction, or replacement of bridges. This proposed CE is similar to an existing FRA CE but adds ''removal'' of bridges to the scope of covered activities. The FRA finds it is sometimes necessary to remove old railroad bridges without simultaneously building a new bridge. In those cases, the removal of the bridge is not substantially different then construction, rehabilitation, or replacement activities and would have similar types of impacts. The FRA is also proposing minor edits to the existing FRA CE for clarity.

Proposed paragraph (c)(18) addresses acquisition, rehabilitation, transfer, or maintenance of vehicles or equipment. The proposed CE is similar to an existing FRA CE but moves the examples of vehicles and equipment to precede the CE's proposed limitation. The FRA also proposes to focus the CE's limitation on whether the activity significantly alters the traffic density characteristics of an existing rail line rather than whether the activity causes a substantial increase in the use of infrastructure within the existing right-of-way. This proposed change will create consistency with other FRA CEs.

Proposed paragraph (c)(20) provides a CE addressing environmental restoration, remediation and pollution prevention activities. This proposed CE is similar to an existing FRA CE. However, proposed paragraph (c)(20) would remove the limitation that activities occur ''in or proximate to existing and former railroad track, infrastructure, stations, or facilities.'' In many cases, environmental restoration and natural resource management activities do not occur in close proximity to existing or former railroad track, infrastructure, stations, or facilities. Instead, these activities—including mitigation—must frequently be located to optimize the ecological value or benefit of the activity and are sited in consultation with, or at the direction of, various permitting agencies.

One commenter suggests FRA adopt a number of existing FHWA CEs from the ''(c)-list'' with minor modifications to accommodate railroad projects. Most of the activities covered by the identified FHWA CEs are already included in one or more of FRA's proposed CEs. With respect to the FHWA CEs identified by the commenter, the activities described in § 771.117(c)(7) (landscaping) and § 771.117(c)(6) (installation of noise barriers or alternations to existing publically owned buildings to provide for noise reduction) are included in the non-exclusive list of activities in proposed paragraph (c)(20); the activities described in § 771.117(c)(8)) (installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devises where no substantial land acquisition or traffic disruption will occur) and § 771.117(c)(27) (highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of the section) are included in proposed paragraph (c)(19); the activities described in § 771.117(c)(14)) (bus and rail car rehabilitation), § 771.117(c)(17) (the purchase of vehicles where the use of the vehicles can be accommodated by existing facilities or new facilities which themselves are within a CE), and § 771.117(c)(19) (purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site) are covered by proposed FRA CE paragraph (c)(18); the activities described in § 771.117(c)(18) (track and rail bed maintenance and improvements when carried out within the existing right-of-way) are covered by proposed paragraph (c)(22); and the activities described in § 771.117(c)(28) (bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of the section) are covered by proposed paragraph (c)(17).

The same commenter also suggests FRA adopt § 771.117(c)(2) (approval of utility installations along or across a transportation facility). At this time and based on FRA's experience, FRA does not have a sufficient need for a CE addressing utility installations. To the extent utility work is being completed as part of an FRA action, the work is typically incidental to a railroad project and as such is generally analyzed in an environmental document (which may be a CE if appropriate) for that project. The commenter also suggests FRA adopt § 771.117(d)(1) (modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (*e.g.* parking, weaving, turning, climbing)). The FRA is proposing CEs similar in scope but directly applicable to railroad

projects (*e.g.,* proposed paragraphs (c)(9) and (22)).

One commenter suggests FRA modify paragraph (c)(16) to allow alterations to existing facilities, locomotives, stations, and rail cars even where the alterations are not for the purpose of making them accessible for the elderly and persons with disabilities. This modification would change the scope of the CE FRA added in 2013 based on FRA's experience with projects intended to improve accessibility. However, FRA notes that these same activities may be covered by another FRA CE (*e.g.,* proposed paragraph (c)(18)).

One commenter suggests FRA adopt one FHWA ''(d)-list'' CE modified slightly to accommodate railroad projects. Specifically, the commenter suggests FRA adopt § 771.117(d)(8) (construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic). These activities are included in proposed paragraph (c)(21).

One commenter asks FRA to address the authority provided by MAP–21 section 1308 and FAST Act section 1315 allowing State DOTs to enter into agreements with FHWA to make CE determinations on FHWA's behalf. The FRA does not have the legal authority to participate in this program and will therefore not include it in this section. The same commenter suggests that FRA address 49 U.S.C. 304, Application of Categorical Exclusions for Multimodal Projects. That section does not create new CEs but rather sets up a process by which OAs can use the CEs of another OA under certain multimodal project circumstances. Since this process applies to all OAs, not just the Agencies, it is appropriately addressed by separate guidance, likely issued by DOT's Office of the Secretary, and not in this SNPRM.

One commenter also asked that FRA apply its CEs less strictly and exercise more flexibility in considering which projects qualify as a CE. The FRA will continue to review each FRA action on an individual basis to ensure the action meets the definition of one or more FRA CEs and does not involve circumstances requiring further environmental study. Where there are unusual circumstances present, FRA will, in cooperation with the applicant, conduct appropriate environmental studies to determine whether application of the CE is still proper.

Two commenters supported the CEs FRA proposed in the June Notice. The FRA appreciates the commenters' support.

Section 771.117 FHWA Categorical Exclusions and

Section 771.118 FTA Categorical Exclusions

The Agencies propose to modify paragraph (a) under §§ 771.117 and 771.118 to begin with ''CEs'' because the Agencies introduce the acronym earlier in the regulation. Additionally, the Agencies propose clarifying in the first sentence of §§ 771.117(a) and 771.118(a) that the actions are based on FHWA's and FTA's past experience, respectively. These are non-substantive changes providing clarity to paragraph (a) in both sections.

Following 3 years of implementation, FHWA and FTA request comments regarding the definition of ''operational right-of-way'' for the CEs located at 23 CFR 771.117(c)(22) and 771.118(c)(12), respectively. As currently defined in the regulation and as discussed in the January 13, 2014, final rule establishing the CEs (see 79 FR 2111–2112), the Agencies attemped to define ''operational right-of-way'' broadly with few conditions, thereby allowing flexibility in the application of those CEs. The Agencies are soliciting feedback from the public on how operational right-of-way is currently defined in the regulation and request detailed proposals on ways to further clarify the existing definition. Is the scope of ''operational right-of-way'' appropriately broad? Should fewer conditions be applied? If so, what conditions? Can the definition be revised to allow for greater flexibility in the application of the CE? If so, how? Please provide specific examples and any data (*e.g.,* cost and benefit information) to help justify your proposal.

Section 771.119 Environmental Assessments

The Agencies propose to add a new paragraph (a)(3) to address, for FRA, situations when a private entity proposes a project that can be analyzed in an EA and there is no applicant as defined in § 771.107. In those situations, this paragraph would give FRA the discretion to require the project sponsor to procure and use a third party contractor, as described in § 771.109(e), to prepare the EA. The Agencies also propose to add a requirement for contractors to execute a conflict of interest disclosure statement similar to the language in paragraph (a)(2) (previously proposed paragraph (a)(ii)), applicable to FTA projects and which FHWA and FTA proposed in the November 2015 NPRM.

The Agencies also propose to clarify in paragraph (d) that an EA must be made available for public inspection at the applicant's office and at the appropriate Administration field office, or for FRA at Headquarters offices, for 30 days. This does not change any substantive or procedural requirement.

Lastly, the Agencies propose to fix a typo in paragraph (h) by moving the period outside the last parenthesis after ''(See 40 CFR 1501.4(e)(2)).''

Section 771.123 Draft Environmental Impact Statements

In paragraphs (a) and existing (b) (proposed paragraph (b)(1), as discussed below), the Agencies propose modifying the existing language in the last sentence of each paragraph to encourage announcing the intent to prepare an EIS by the appropriate means at the State level, as well as the local level.

The Agencies propose renumbering paragraph (b) as paragraph (b)(1) and adding a new paragraph (b)(2) regarding timing of the coordination plan in relation to notice of intent publication. This proposal reflects the changes to 23 U.S.C. 139(g)(1)-coordination plan.

In paragraph (c), the Agencies propose replacing ''discuss'' with ''document'' in the second sentence, which more accurately describes the action needing to occur. Additionally, in paragraph (c), the Agencies propose adding language to reflect the FAST Act changes to 23 U.S.C. 139(f)(4) regarding the range of alternatives. The proposed language would fulfill the statutory intent of mandating use of the range of alternatives for all Federal environmental reviews and permit processes, to the maximum extent practicable and consistent with Federal law, while directing the reader to the statute for the specific exception requirements. The Agencies propose inserting after the second sentence a statement that the range of alternatives considered for further study shall be used for all Federal environmental reviews and permit processes, to the maximum extent practicable and consistent with Federal law, unless the lead and participating agencies agree to modify the alternatives in order to address significant new information and circumstances or to fulfill NEPA responsibilities in a timely manner, in accordance with 23 U.S.C. 139(f)(4)(B).

Section 771.124 Final Environmental Impact Statement/Record of Decision

The Agencies propose two non-substantive changes in this section. In paragraph (a)(1), the Agencies propose

to replace ''record of decision'' with ''ROD'' because the term is introduced earlier in the regulation. In paragraph (a)(1)(ii), the Agencies propose deleting ''and'' after ''environmental concerns'' because it is awkward and unnecessary.

Additionally, the Agencies propose inserting ''pursuant to 40 CFR 1503.4(c)'' at the end of the clause ''an errata sheet may be attached to the draft statement'' in paragraph (a)(3) to provide consistency with 23 CFR 771.125(g).

Section 771.125 Final Environmental Impact Statements

While the Agencies propose to add FRA to part 771, the Agencies are not proposing to change the general requirement in paragraph (c) that the Agencies submit certain Final EISs to the Administration's Headquarters for prior concurrence. The FRA currently administers its environmental program from Headquarters. If FRA establishes field offices in the future, Headquarters' prior concurrence for the actions described in paragraph (c) will still be required.

In addition, in paragraph (d) the Agencies propose to replace ''grant request'' with ''request for financial assistance'' to clarify that approval of the final EIS does not commit the Administration to provide any future financial assistance (not just grant funding) for the preferred alternative.

Section 771.129 Re-Evaluations

In paragraph (c), the Agencies proposed re-inserting the sentence regarding consultations being documented when determined necessary by the Administration, which is existing language in 23 CFR 771.129(c) but was inadvertently deleted when the November 2015 NPRM was published for public review and comment. This is a non-substantive change.

Section 771.131 Emergency Action Procedures

The Agencies propose capitalizing ''headquarters'' in order to be consistent with other references to Headquarters in the regulation; this is a non-substantive change.

The Agencies also propose to add a reference to FRA's CE covering the response to emergencies and disasters.

Section 771.139 Limitation on Actions

The Agencies propose modifying the title and text of this section by replacing ''actions'' with ''claims'' to address a potential inconsistency with the definition of ''Action'' in 23 CFR 771.107(b). The Agencies seek to clarify that the limitation is on legal claims arising out of an ''Action,'' not on an ''Action'' itself. This is a non-substantive change. Additionally, the Agencies propose adding the word ''time'' before the word ''barred'' throughout this section to clarify that this is a time limitation on claims. This is also a non-substantive change.

The Agencies propose modifying this section to clearly describe the different limitations on claims. The Agencies propose to clarify the 150-day limitation is limited to FHWA and FTA. The Agencies also propose to add a sentence immediately following addressing FRA's 2-year limitation on claims for railroad projects requiring the approval of the Secretary under NEPA created by section 11503 of the FAST Act (49 U.S.C. 24201(a)(4)). Furthermore, the Agencies would revise the second reference to 150 days in the existing language to broadly refer to the two standards by stating ''These time periods do not lengthen any shorter time period . . .''

The Agencies also propose to delete the footnote in this section to be consistent with the November 2015 NPRM. In that NPRM the Agencies proposed removing references to specific guidance documents, such as the footnote in this section, in order to maximize flexibility of this regulation. The Agencies are currently updating the ''SAFETEA–LU Environmental Review Process: Final Guidance,'' so the current reference is outdated.

Section 4(f) Regulation Changes (Part 774)

Section 774.3 Section (f) Approvals

As part of the review of regulatory provisions in drafting this SNPRM, the Agencies are proposing to modify the footnote in paragraph (d) to refer the reader to FHWA's Section 4(f) Programmatic Evaluations Web page (*www.environment.fhwa.dot.gov/4f/4fnationwideevals.asp*) rather than listing the Section 4(f) programmatic evaluations in the regulation. By providing a Web page, the reader would have access to the most recent list of programmatic evaluations available, and the regulation would stay current whenever the Agencies revise the list of Section 4(f) programmatic evaluations. In addition, the Web site may be used to provide guidance on use of the programmatic approaches.

Section 774.13 Exceptions

This section sets forth a number of exceptions to otherwise applicable Section 4(f) requirements. The exceptions are either founded in statute or reflect case law and longstanding practices governing when to apply Section 4(f).

Paragraph (a) is an exception from the Section 4(f) process for projects involving work on a transportation facility that is itself historic. This exception reflects the Agencies' longstanding policy that when a project involves a historic facility that is already dedicated to a transportation purpose and does not adversely affect the historic qualities of that facility, then the project does not ''use'' the facility within the meaning of Section 4(f). The exception applies to all types of transportation facilities, including elements, structures, and features of a highway, transit, or rail facility.

In the FAST Act, Congress created two new exceptions from Section 4(f) for historic transportation facilities in certain circumstances. The Agencies propose to amend paragraph (a) to incorporate the new exceptions. Specifically, the Agencies propose to incorporate the two new exceptions from the Section 4(f) process for historic transportation facilities by renumbering paragraph (a) as paragraph (a)(3) and adding new paragraphs (a)(1) and (2). The Agencies propose to add to paragraph (a) the introductory phrase ''the use of historic transportation facilities in certain circumstances:'' to match the other existing exceptions in section 774.13.

The Agencies propose new paragraph (a)(1) to incorporate section 1303 of the FAST Act which exempts from Section 4(f) the use of common concrete and steel bridges and culverts, built after 1945, that the Advisory Council on Historic Preservation exempted from individual Section 106 review under a Program Comment.[1] The Program Comment applies to bridges lacking distinction, not previously listed or determined eligible for listing on the National Register, and not located in or adjacent to historic districts, and only becomes available in a particular State after the State Department of Transportation, the State Historic Preservation Officer, and the applicable FHWA Division office consult and reach agreement on whether the State has any exceptional bridges that the Program Comment will not cover. While FHWA proposed the Program Comment, it can be used by any Federal agency, including FTA and FRA.

The intent of this new Section 4(f) exception is to eliminate unnecessary

[1] ''Program Comment Issue for Streamlining Section 106 Review for Actions Affecting Post-1945 Concrete and Steel Bridges,'' 77 FR 68790 (Nov. 16, 2012).

Section 4(f) processes for the hundreds of thousands of common ''cookie-cutter'' bridges constructed after 1945, which are not exceptional, in those States that have reported the results of the consultation required by the Program Comment. To date, 35 States and Puerto Rico have completed this requirement, as reflected on the Bridge Program Comment Excepted Bridges list available at *https://www.environment.fhwa.dot.gov/histpres/bridges_list.asp.*

The Agencies propose new paragraph (a)(2) to incorporate section 11502 of the FAST Act, which exempts improvements to historic railroad and transit lines and their elements from Section 4(f).

The Agencies interpret the words ''improvements to'' in section 11502 as inclusive of the other activities listed in section 11502: Maintenance, rehabilitation, or operation of railroad or rail transit lines. For clarity, the Agencies expanded the list of examples of activities that may occur on elements of railroad or rail transit lines that may improve the transportation function of those railroad and rail transit lines. The Agencies believe that preservation, modernization, reconstruction, and replacement of an element of a historic transportation facility are types of ''improvements'' to railroad and rail transit lines and thus propose to include these activities in the exception. The Agencies further believe that any type of safety improvement to a highway crossing of an active railroad or transit line—whether at grade or grade separated—should be considered an ''improvement to'' the railroad or transit line by virtue of making travel safer for the public, and thus would be covered by the new exception.

While the Agencies chose not to further define the terms ''railroad or rail transit lines or elements thereof'' within the regulation text, they view these terms as including all elements related to the historic or current transportation function such as railroad or rail transit track, elevated support structures, rights-of-way, substations, communication devices, and maintenance facilities. The Agencies do not propose to include historic sites unrelated to transportation but located within or adjacent to railroads or rail transit lines, or elements thereof in this exception. Examples of such exclusions include archeological sites unrelated to railroad or rail transit and sites of traditional religious and cultural importance to Indian tribes.

Per section 11502 of the FAST Act, all stations, and certain bridges and tunnels, are not included in the proposed paragraph (a)(2) exception. Specifically, bridges and tunnels on railroad lines that have been abandoned, as determined by the Surface Transportation Board through the process described in 49 CFR part 1152, are not included in the proposed exception, except for bridges and tunnels on railroads that have been railbanked, as defined in 16 U.S.C. 1247(d) or otherwise preserved for future transportation use. In addition, the Agencies are proposing that bridges and tunnels on rail transit lines that are not in use and over which regular service has never operated are not included in the exception.

The proposed new paragraph (a)(3) reads as set out in the regulatory text below. This paragraph mirrors existing § 774.13(a). The Agencies are not proposing to change the short list of activities: ''restoration, rehabilitation, or maintenance'' that are included in the existing regulatory text now located under paragraph (a)(3), but the Agencies specifically request that commenters consider whether the list of covered activities should be expanded to mirror the activities included in paragraph (a)(2) which is proposed to read: ''maintenance, preservation, rehabilitation, operation, modernization, reconstruction, and replacement.'' Under this option, there would still be two important conditions for the exception to apply under paragraph (a)(3): The Agencies must determine through a Section 106 consultation that the work would not adversely affect the historic qualities of the historic transportation facility that cause it to be listed on or eligible for the National Register of Historic Places and the official(s) with jurisdiction must not object to that determination. Having the same list of activities in both subparagraphs is desirable because it would simplify administration of the exception. The Agencies seek comment, including examples, regarding whether the two conditions in paragraph (a)(3) would adequately protect significant historic transportation facilities in the case of projects to operate, modernize, reconstruct or replace the transportation facility.

Section 774.15 Constructive Use Determinations

In paragraph (f)(2), the Agencies propose to reorganize the paragraph and to add railroad projects to the sentence referencing the FTA guidelines for transit noise and vibration assessments because FRA has applied FTA criteria to evaluate noise impacts resulting from railroad operations for decades. In addition, the Agencies propose to add a new situation in which a constructive use would not occur. Specifically, the Agencies are proposing to add a reference to high-speed ground transportation projects having moderate noise impacts according to FRA's established high-speed ground transportation noise and vibration guidelines. The FRA first developed these guidelines, available at *https://www.fra.dot.gov/eLib/Details/L04090,* in the late 1990s and they apply to train operations over 90 miles per hour.

Section 774.17 Definitions

In the definition of ''Administration'' the Agencies propose to add FRA.

In the definition of ''CE'' the Agencies propose to add a reference to FRA's and FTA's CEs in 23 CFR 771.116 and 23 CFR 771.118, respectively.

49 CFR Part 264—Environmental Impact and Related Procedures

The Agencies propose to amend part 264 in 49 CFR to include references to 23 CFR part 771 and 23 CFR part 774. A cross reference would assist potential FRA applicants, State and Federal agencies, and the public.

Rulemaking Analyses and Notices

Statutory/Legal Authority for This Rulemaking

The Agencies derive explicit authority for this rulemaking action from 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 prescribe regulations in 49 U.S.C. 322(a) to the Agencies' Administrators under 49 CFR 1.81(a)(3), The Secretary also delegated authority to the Agencies' Administrators to implement NEPA and Section 4(f), the statutes implemented by this rule, in 49 CFR 1.81(a)(4) and (5). Moreover, the CEQ regulations that implement NEPA provide at 40 CFR 1507.3 that agencies shall continue to review their policies and NEPA implementing procedures and revise them as necessary to ensure full compliance with the purposes and provisions of NEPA.

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 (FHWA–2015–0011) at *regulations.gov.* Comments received after the comment closing date will be filed in the docket and the Agencies will 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 U.S. Department of Transportation regulatory policies and procedures (44 FR 11032). 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 rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866.

This SNPRM proposes to modify 23 CFR parts 771 and 774 in order to be consistent with changes introduced by MAP–21 and the FAST Act, make the regulation more consistent with the FHWA and FTA practices, and add FRA to parts 771 and 774. These proposed changes would not adversely affect, in any material way, any sector of the economy. 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. The Agencies anticipate that the changes in this SNPRM would enable projects to move more expeditiously through the Federal review process and would reduce the preparation of extraneous environmental documentation and analysis not needed for compliance with NEPA or Section 4(f) while still ensuring that projects are built in an environmentally responsible manner and consistent with Federal law. The Agencies request comment, including data and information on the experiences of project sponsors, on the likely effects of the changes being proposed.

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 revisions are expected to expedite environmental review and thus are anticipated to be less burdensome than any current impact on small business 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 $148.1 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.

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 determined 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), 91 FR 27534 (May 10, 2012) (available online at *www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/index.cfm*), 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, 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* (available online at *www.fhwa.dot.gov/legsregs/directives/orders/664023a.cfm*). The FTA also issued an update to its EJ policy, *FTA Policy Guidance for Federal Transit Recipients,* 77 FR 42077 (July 17, 2012) (available online at *http://www.fta.dot.gov/legislation_law/12349_14740.html*).

The Agencies have evaluated this proposed rule under the Executive Order, the DOT Order, the FHWA Order, and the FTA Circular. The Agencies have determined that the proposed changes to 23 CFR parts 771 and 774, if finalized as proposed, would not cause disproportionately high and adverse human health and environmental effects on minority or low income populations.

At the time the Agencies apply the NEPA implementing procedures in 23 CFR part 771, the Agencies would have an independent obligation to conduct an evaluation of the proposed action under the applicable EJ orders and guidance to determine whether the proposed action has the potential for EJ effects. The rule would not affect the scope or outcome of that EJ evaluation. In any instance where there are potential EJ effects resulting from a proposed Agency action covered under any of the NEPA classes of action in 23 CFR part 771, public outreach under the applicable EJ orders and guidance would provide affected populations with the opportunity to raise any concerns about those potential EJ effects. *See* DOT Order 5610.2(a), FHWA Order 6640.23A, and FTA Policy Guidance for Transit Recipients (available at links above). Indeed, outreach to ensure the effective involvement of minority and low income populations where there is potential for EJ effects is a core aspect of the EJ orders and guidance. For these reasons, the Agencies have determined that no further EJ analysis is needed and no mitigation is required in connection with the proposed revisions to the Agencies' NEPA and Section 4(f) implementing regulations (23 CFR parts 771 and 774).

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)). The CEQ regulations do not direct agencies to prepare a NEPA analysis or document before establishing agency procedures (such as this regulation) that supplement the CEQ regulations for implementing NEPA. The changes proposed in this rule are part of those agency procedures, and therefore establishing the proposed changes does not require preparation of a NEPA analysis or document. Agency NEPA procedures are generally procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3.

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 771

Environmental review process, Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Programmatic approaches, Public lands, Railroads, Recreation areas, Reporting and recordkeeping requirements.

23 CFR Part 774

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Mass transportation, Public lands, Railroads recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

49 CFR Part 264

Environmental impact statements, Environmental review process, Environmental protection, Grant programs—transportation, Programmatic approaches, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 622

Environmental impact statements, Environmental review process, Grant programs—transportation, Historic preservation, Programmatic approaches, Public lands, Public transportation, Recreation areas, Reporting and recordkeeping requirements, Transit.

Issued in Washington, DC, under authority delegated in 49 CFR 1.85 and 1.91:

Brandye L. Hendrickson,

Acting Administrator, Federal Highway Administration.

Heath Hall,

Acting Administrator, Federal Railroad Administration.

Jane Williams,

Acting Administrator, Federal Transit Administration.

In consideration of the foregoing, the Agencies propose to amend title 23, Code of Federal Regulations parts 771 and 774, and title 49, Code of Federal Regulations parts 264 and 622, as follows:

Title 23—Highways

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 1. Revise the authority citation for part 771 to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 106, 109, 128, 138, 139, 315, 325, 326, and 327; 49 U.S.C. 303; 40 CFR parts 1500 through 1508; 49 CFR 1.81, 1.85, and 1.91; Pub. L. 109–59, 119 Stat. 1144, Sections 6002 and 6010; Pub. L. 112–141, 126 Stat. 405, Sections 1315, 1316, 1317, 1318, and 1319; and Public Law 114–94, 129 Stat. 1312, Sections 1314 and 1432.

■ 2. Revise § 771.101 to read as follows:

§ 771.101 Purpose.

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA) for implementing the National Environmental Policy Act of 1969 as amended (NEPA), and supplements the NEPA regulation of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508 (CEQ regulation). Together these regulations set forth all FHWA, FRA, FTA and Department of Transportation (DOT) requirements under NEPA for the processing of highway, public transportation, and railroad projects. This regulation also sets forth procedures to comply with 23 U.S.C. 109(h), 128, 138, 139, 325, 326, and 327; 49 U.S.C. 303 and 5323(q); Public Law 112–141, 126 Stat. 405, section 1301 as applicable; and Public Law 114–94, 129 Stat. 1312, section 1304.

■ 3. Further amend § 771.105, as proposed to be amended at 80 FR 72624 (November 20, 2015), by removing the introductory text and revising paragraphs (a), (b), and the first sentence in (e)(2) to read as follows:

§ 771.105 Policy.

(a) To the maximum extent practicable and consistent with Federal law, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental review document required by this regulation.[1]

(b) Programmatic approaches be developed for compliance with environmental requirements (including the requirements found at 23 U.S.C. 139(b)), coordination among agencies and/or the public, or to otherwise enhance and accelerate project development.

* * * * *

(e) * * *

(2) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures.

* * *

* * * * *

■ 4. Further amend § 771.107, as proposed to be amended at 80 FR 72624 (November 20, 2015), by revising the defintions for ''Action,'' ''Administration,'' and ''Administration action'' to read as follows:

§ 771.107 Definitions.

* * * * *

Action. A highway, transit, or railroad project proposed for FHWA, FRA, or FTA funding. It also includes activities such as joint and multiple use permits, changes in access control, rulemakings, etc., which may or may not involve a commitment of Federal funds.

Administration. The FHWA, FRA, or FTA, whichever is the designated Federal lead agency for the proposed action. A reference herein to the Administration means the FHWA, FRA, or FTA, or a State when the State is functioning as the FHWA, FRA, or FTA in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 325, 326, or 327, or other applicable law. A reference herein to the FHWA, FRA, or FTA means the State when the State is functioning as the FHWA, FRA, or FTA, respectively in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 325, 326, or 327, or other applicable law. Nothing in this definition alters the scope of any delegation or assignment made by FHWA, FRA, or FTA.

Administration action. FHWA, FRA, or FTA approval of the applicant's request for Federal funds for construction. It also includes approval of activities such as joint and multiple use permits, changes in access control, rulemakings, etc., which may or may not involve a commitment of Federal funds.

* * * * *

■ 5. Further amend § 771.109, as proposed to be amended at 80 FR 72624 (November 20, 2015), by revising paragraphs (a)(1), (b)(1), and (c)(2), (6), and (7) and adding paragrpah (e) to read as follows:

§ 771.109 Applicability and responsibilities.

(a)(1) The provisions of this regulation and the CEQ regulation apply to actions where the Administration exercises sufficient control to condition the permit, project, or other approvals. Actions taken by the applicant which do not require Federal approvals, such as preparation of a regional transportation plan are not subject to this regulation.

* * * * *

(b)(1) The applicant, in cooperation with the Administration, is responsible for implementing those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation unless the Administration approves of their deletion or modification in writing. The FHWA will assure that this is accomplished as a part of its stewardship and oversight responsibilities. The FRA and FTA will assure implementation of committed mitigation measures by including the mitigation measures by reference in the grant agreement, followed by reviews of designs and construction inspections.

(c) * * *

(2) Any applicant that is a State or local governmental entity that is, or is expected to be, a direct recipient of funds under title 23, U.S. Code or chapter 53 of title 49, U.S. Code for the action or is, or is expected to be, a direct recipient of financial assistance for which FRA is responsible (*e.g.,* Subtitle V of Title 49, U.S. Code) shall serve as a joint lead agency with the Administration in accordance with 23 U.S.C. 139, and may prepare environmental review documents if the Administration furnishes guidance and independently evaluates the documents.

* * * * *

(6) Subject to paragraph (e) of this section, the role of a project sponsor that is a private institution or firm is limited

[1] FHWA, FRA, and FTA have supplementary guidance on environmental documents and procedures for their programs available on the Internet at *http://www.fhwa.dot.gov, http://www.fra.dot.gov,* and *http://www.fta.dot.gov,* or in hardcopy by request.

to providing technical studies and commenting on environmental review documents.

(7) A participating agency is responsible for providing input, as appropriate, during the times specified in the coordination plan under 23 U.S.C. 139(g) and within the agency's special expertise or jurisdiction. Participating agencies provide comments, if any, and concurrence on the schedule within the coordination plan.

* * * * *

(e) When FRA is the lead Federal agency, and the project sponsor is a private entity, and there is no applicant acting as a joint-lead agency, FRA shall use a qualified third-party contractor to prepare an EIS. Third-party contracting is a voluntary arrangement whereby the project sponsor retains a contractor to assist in conducting the environmental review under the direction, supervision, and control of the Administration. FRA must oversee the preparation of the EIS and retains ultimate control over the third-party contractor's work product. FRA may require use of a third-party contractor for preparation of an EA at its discretion. FRA, the project sponsor, and the contractor will enter into a memorandum of understanding (MOU) that outlines at a minimum the conditions and procedures to be followed in carrying out the MOU and the responsibilities of the parties to the MOU.

■ 6. Further amend § 771.111, as proposed to be amended at 80 FR 72624 (November 20, 2015), by revising paragraphs (a)(2)(i), (a)(3), (b), (c), (d), (i), and (j) to read as follows:

§ 771.111 Early coordination, public involvement, and project development.

(a) * * *

(2)(i) The information and results produced by, or in support of, the transportation planning process may be incorporated into environmental review documents in accordance with 40 CFR parts 1500 through 1508, 23 CFR part 450, or 23 U.S.C. 139(f), 168, or 169, as applicable.

* * * * *

(3) Applicants intending to apply for funds should notify the Administration at the time that a project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action (see § 771.115) and related environmental laws and requirements and of the need for specific studies and findings that would normally be developed during the environmental review process. A lead agency, in consultation with participating agencies, will develop an environmental checklist, as appropriate, to assist in resource and agency identification.

(b)(1) The Administration will identify the probable class of action as soon as sufficient information is available to identify the probable impacts of the action.

(2) For projects to be evaluated with an EIS, the Administration shall respond to a project sponsor's formal project notification within 45 days of receipt and in writing.

(c) When the FHWA, FRA, or FTA are involved in the development of an action, or when the FHWA, FRA, or FTA act as a joint lead agency with another Federal agency, a mutually acceptable process will be established on a case-by-case basis. A project sponsor may request the Secretary to designate the lead Federal agency when project elements fall within multiple DOT agencies' expertise.

(d) During the early coordination process, the lead agencies may request other agencies having an interest in the action to participate, and must invite such agencies if the action is subject to the project development procedures in 23 U.S.C. 139. Agencies with special expertise may be invited to become cooperating agencies. Agencies with jurisdiction by law must be requested to become cooperating agencies. The lead agencies identify participating agencies within 45 days from publication of the notice of intent.

* * * * *

(i) Applicants for FRA programs or the FTA capital assistance program:

(1) Achieve public participation on proposed actions through activities that engage the public, including public hearings, town meetings, and charrettes, and seeking input from the public through scoping for the environmental review process. Project milestones may be announced to the public using electronic or paper media (*e.g.,* newsletters, note cards, or emails) pursuant to 40 CFR 1506.6. For actions requiring EISs, an early opportunity for public involvement in defining the purpose and need for the action and the range of alternatives must be provided, and a public hearing will be held during the circulation period of the draft EIS.

(2) May participate in early scoping as long as enough project information is known so the public and other agencies can participate effectively. Early scoping constitutes initiation of NEPA scoping while local planning efforts to aid in establishing the purpose and need and in evaluating alternatives and impacts are underway. Notice of early scoping must be made to the public and other agencies. If early scoping is the start of the NEPA process, the early scoping notice must include language to that effect. After development of the proposed action at the conclusion of early scoping, FRA or FTA will publish the Notice of Intent if it is determined at that time that the proposed action requires an EIS. The Notice of Intent will establish a 30-day period for comments on the purpose and need, alternatives, and the scope of the NEPA analysis.

(3) Are encouraged to post and distribute materials related to the environmental review process, including but not limited to, environmental documents (*e.g.,* EAs and EISs), environmental studies (*e.g.,* technical reports), public meeting announcements, and meeting minutes, through publicly-accessible electronic means, including project Web sites. Applicants are encouraged to keep these materials available to the public electronically until the project is constructed and open for operations.

(4) Are encouraged to post all findings of no significant impact (FONSI), combined final environmental impact statement (final EIS)/records of decision (ROD), and RODs on a project Web site until the project is constructed and open for operation.

(j) Information on the FHWA environmental process may be obtained from: FHWA Director, Office of Project Development and Environmental Review, Federal Highway Administration, Washington, DC 20590, or *www.fhwa.dot.gov.* Information on the FRA environmental process may be obtained from: FRA Chief, Environmental and Corridor Planning Division, Office of Program Delivery, Federal Railroad Administration, Washington, DC 20590, or *www.fra.dot.gov.* Information on the FTA environmental process may be obtained from: FTA Director, Office of Environmental Programs, Federal Transit Administration, Washington, DC 20590, or *www.fta.dot.gov.*

■ 7. Further amend § 771.113, as proposed to be amended at 80 FR 72624 (November 20, 2015), by revising the second sentence in paragraph (a) and adding paragraph (d)(4) to read as follows:

§ 771.113 Timing of Administration activities.

(a) * * * This work includes drafting environmental documents and completing environmental studies, related engineering studies, agency

coordination, and public involvement.
* * *
* * * * *
(d) * * *
(4) FRA makes exceptions on a case-by-case basis for purchases of railroad components or materials that can be used for other projects or resold.

■ 8. Further amend § 771.115, as proposed to be amended at 80 FR 72624 (November 20, 2015), by removing the introductory text, revising paragraphs (a) introductory text and (a)(4), adding paragraph (a)(6), and revising paragraph (b) to read as follows:

§ 771.115 Classes of actions.

(a) EIS (Class I). Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally require an EIS:
* * * * *
(4) For FHWA actions, new construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing transportation right-of-way.
* * * * *
(6) For FRA actions, new construction of major railroad lines or facilities (*e.g.* terminal passenger stations, freight transfer yards, or railroad equipment maintenance facilities) that will not be located within an existing transportation right-of-way.

(b) CE (Class II). Actions that do not individually or cumulatively have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in § 771.117(c) for FHWA actions or pursuant to § 771.118(c) for FTA actions. When appropriately documented, additional projects may also qualify as CEs pursuant to § 771.117(d) for FHWA actions or pursuant to § 771.118(d) for FTA actions. FRA's CEs are listed in § 771.116.
* * * * *

■ 9. Add § 771.116 to read as follows:

§ 771.116 FRA categorical exclusions.

(a) CEs are actions which meet the definition contained in 40 CFR 1508.4, and, based on FRA's past experience with similar actions, do not involve significant environmental impacts. They are actions which: Do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require FRA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Significant environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) Actions that FRA determines fall within the following categories of FRA CEs and that meet the criteria for CEs in the CEQ regulation (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after FRA approval. Where there is a project applicant or sponsor, it must submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result.

(1) Administrative procurements (*e.g.,* for general supplies), contracts for personal services, and training.

(2) Personnel actions.

(3) Planning or design activities that do not commit to a particular course of action affecting the environment.

(4) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(5) Internal orders, policies, and procedures not required to be published in the **Federal Register** under the Administrative Procedure Act, 5 U.S.C. 552(a)(1).

(6) Rulemakings issued under section 17 of the Noise Control Act of 1972, 42 U.S.C. 4916.

(7) Financial assistance to an applicant where the financial assistance funds an action that is already completed, such as refinancing outstanding debt.

(8) Hearings, meetings, or public affairs activities.

(9) Maintenance or repair of existing railroad facilities where the maintenance or repair activities do not change the existing character of the facility, including equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; tunnels; maintenance-of-way and maintenance-of-equipment bases.

(10) Emergency repair or replacement, including reconstruction, restoration, or retrofitting of an essential rail facility damaged by the occurrence of a natural disaster or catastrophic failure. Such repair or replacement may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the rail facility's original construction.

(11) Operating assistance to a railroad to continue existing service or to increase service to meet demand, where the assistance will not significantly alter the traffic density characteristics of existing rail service.

(12) Minor rail line additions, including construction of side tracks, passing tracks, crossovers, short connections between existing rail lines, and new tracks within existing rail yards or right-of-way, provided that such additions are not inconsistent with existing zoning, do not involve acquisition of a significant amount of right of way, and do not significantly alter the traffic density characteristics of the existing rail lines or rail facilities.

(13) Acquisition or transfer of real property or existing railroad facilities including: Track and bridge structures; electrification, communication, signaling or security facilities; stations; and maintenance of way and maintenance of equipment bases or the right to use such real property and railroad facilities, for the purpose of conducting operations of a nature and at a level of use similar to those presently or previously existing on the subject properties or facilities.

(14) Research, development, or demonstration activities on existing railroad lines or at existing facilities, where such activities do not require the acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail line or facility, such as advances in signal communication or train control sytems, equipment, track, or track structures.

(15) Promulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased

emissions of air or water pollutants or noise.

(16) Alterations to existing facilities, locomotives, stations, and rail cars in order to make them accessible for the elderly and persons with disabilities, such as modifying doorways, adding or modifying lifts, constructing access ramps and railings, modifying restrooms, and constructing accessible platforms.

(17) The rehabilitation, reconstruction, removal, or replacement of bridges, the rehabilitation or maintenance of the rail elements of docks or piers for the purposes of intermodal transfers, and the construction of bridges, culverts, or grade separation projects that are predominantly within existing right-of-way and that do not involve extensive in-water construction activities, such as projects replacing bridge components including stringers, caps, piles, or decks, the construction of roadway overpasses to replace at-grade crossings, construction or reconstruction of approaches or embankments to bridges, or construction or replacement of short span bridges.

(18) Acquisition (including purchase or lease), rehabilitation, transfer, or maintenance of vehicles or equipment that does not significantly alter the traffic density characteristics of an existing rail line, including locomotives, passenger coaches, freight cars, trainsets, and construction, maintenance or inspection equipment.

(19) Installation, repair and replacement of equipment and small structures designed to promote transportation safety, security, accessibility, communication or operational efficiency that take place predominantly within the existing right-of-way and do not result in a major change in traffic density on the existing rail line or facility, such as the installation, repair or replacement of surface treatments or pavement markings, small passenger shelters, passenger amenities, benches, signage, sidewalks or trails, equipment enclosures, and fencing, railroad warning devices, train control systems, signalization, electric traction equipment and structures, electronics, photonics, and communications systems and equipment, equipment mounts, towers and structures, information processing equipment, and security equipment, including surveillance and detection cameras.

(20) Environmental restoration, remediation, pollution prevention, and mitigation activities conducted in conformance with applicable laws, regulations and permit requirements, including activities such as noise mitigation, landscaping, natural resource management activities, replacement or improvement to storm water oil/water separators, installation of pollution containment systems, slope stabilization, and contaminated soil removal or remediation activities.

(21) Assembly or construction of facilities or stations that are consistent with existing land use and zoning requirements, do not result in a major change in traffic density on existing rail or highway facilities and result in approximately less than ten acres of surface disturbance, such as storage and maintenance facilities, freight or passenger loading and unloading facilities or stations, parking facilities, passenger platforms, canopies, shelters, pedestrian overpasses or underpasses, paving, or landscaping.

(22) Track and track structure maintenance and improvements when carried out predominantly within the existing right-of-way that do not cause a substantial increase in rail traffic beyond existing or historic levels, such as stabilizing embankments, installing or reinstalling track, re-grading, replacing rail, ties, slabs and ballast, installing, maintaining, or restoring drainage ditches, cleaning ballast, constructing minor curve realignments, improving or replacing interlockings, and the installation or maintenance of ancillary equipment.

■ 10. Revise § 771.117(a) to read as follows:

§ 771.117 FHWA categorical exclusions.

(a) CEs are actions which meet the definition contained in 40 CFR 1508.4, and, based on FHWA's past experience with similar actions, do not involve significant environmental impacts. They are actions which: Do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

* * * * *

■ 11. Revise § 771.118(a) to read as follows:

§ 771.118 FTA categorical exclusions.

(a) CEs are actions which meet the definition contained in 40 CFR 1508.4, and, based on FTA's past experience with similar actions, do not involve significant environmental impacts. They are actions which: Do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

* * * * *

■ 12. Further amend § 771.119, as proposed to be amended at 80 FR 72624 (November 20, 2015), by redesignating paragraphs (a)(i) and (ii) as paragraphs (a)(1) and (2), adding paragraph (a)(3), and revising paragraphs (d) and (h) to read as follows:

§ 771.119 Environmental assessments.

(a) * * *

(3) For FRA actions: When FRA or the applicant, as joint lead agency, select a contractor to prepare the EA, then the contractor must execute an FRA conflict of interest disclosure statement. In the absence of an applicant, FRA may require private project sponsors to provide a third party contractor to prepare the EA as described in § 771.109(e).

* * * * *

(d) The applicant does not need to circulate the EA for comment but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices or, for FRA at Headquarters, for 30 days and in accordance with paragraphs (e) and (f) of this section. The applicant shall send the notice of availability of the EA, which briefly describes the action and its impacts, to the affected units of Federal, State and local government. The applicant shall also send notice to the State intergovernmental review contacts established under Executive Order 12372.

* * * * *

(h) When the FHWA expects to issue a FONSI for an action described in § 771.115(a), copies of the EA shall be made available for public review (including the affected units of government) for a minimum of 30 days before the Administration makes its final decision (See 40 CFR 1501.4(e)(2)). This public availability shall be announced by a notice similar to a public hearing notice.

* * * * *

■ 13. Further amend § 771.123, as proposed to be amended at 80 FR 72624 (November 20, 2015), by revising

paragraphs (a), (b) and (c) to read as follows:

§ 771.123 Draft environmental impact statements.

(a) A draft EIS shall be prepared when the Administration determines that the action is likely to cause significant impacts on the environment. When the applicant, after consultation with any project sponsor that is not the applicant, has notified the Administration in accordance with 23 U.S.C. 139(e) and the decision has been made by the Administration to prepare an EIS, the Administration will issue a Notice of Intent (40 CFR 1508.22) for publication in the **Federal Register**. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the State or local level.

(b)(1) After publication of the Notice of Intent, the lead agencies, in cooperation with the applicant (if not a lead agency), will begin a scoping process that may take into account any planning work already accomplished, in accordance with 23 CFR 450.212, 450.318, or any applicable provisions of the CEQ regulations at 40 CFR parts 1500 through 1508. The scoping process will be used to identify the purpose and need, the range of alternatives and impacts, and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. Scoping is normally achieved through public and agency involvement procedures required by § 771.111. If a scoping meeting is to be held, it should be announced in the Administration's Notice of Intent and by appropriate means at the State or local level.

(2) The lead agencies must establish a coordination plan, including a schedule, within 90 days of notice of intent publication.

(c) The draft EIS shall be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency). The draft EIS shall evaluate all reasonable alternatives to the action and document the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The range of alternatives considered for further study shall be used for all Federal environmental reviews and permit processes, to the maximum extent practicable and consistent with Federal law, unless the lead and participating agencies agree to modify the alternatives in order to address significant new information and circumstances or to fulfill NEPA responsibilities in a timely manner, in accordance with 23 U.S.C. 139(f)(4)(B). The draft EIS shall also summarize the studies, reviews, consultations, and coordination required by environmental laws or Executive orders to the extent appropriate at this stage in the environmental process.

* * * * *

■ 14. Further amend § 771.124, as proposed to be amended at 80 FR 72624 (November 20, 2015), by revising paragraphs (a)(1) introductory text, (a)(1)(ii), and (a)(3) to read as follows:

§ 771.124 Final environmental impact statement/record of decision document.

(a)(1) After circulation of a draft EIS and consideration of comments received, the lead agencies, in cooperation with the applicant (if not a lead agency), shall combine the final EIS and ROD, to the maximum extent practicable, unless:

* * * * *

(ii) There are significant new circumstances or information relevant to environmental concerns that bear on the proposed action or the impacts of the proposed action.

* * * * *

(3) If the comments on the draft EIS are minor and confined to factual corrections or explanations that do not warrant additional agency response, an errata sheet may be attached to the draft statement pursuant to 40 CFR 1503.4(c), which together shall then become the combined final EIS/ROD.

* * * * *

■ 15. Further amend § 771.125, as proposed to be amended at 80 FR 72624 (November 20, 2015), by revising paragraph (d) to read as follows:

§ 771.125 Final environmental impact statements.

* * * * *

(d) Approval of the final EIS is not an Administration action as defined in paragraph (c) of § 771.107 and does not commit the Administration to approve any future request for financial assistance to fund the preferred alternative.

* * * * *

■ 16. Further amend § 771.129, as proposed to be amended at 80 FR 72624 (November 20, 2015), by revising paragraph (c) to read as follows:

§ 771.129 Re-evaluations.

* * * * *

(c) After the Administration issues a combined final EIS/ROD, ROD, FONSI, or CE designation, the applicant shall consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested Administration action. These consultations will be documented when determined necessary by the Administration.

■ 17. Revise § 771.131 to read as follows:

§ 771.131 Emergency action procedures.

Responses to some emergencies and disasters are categorically excluded under § 771.117 for FHWA, § 771.118 for FTA, or § 771.116 for FRA. Otherwise, requests for deviations from the procedures in this regulation because of emergency circumstances (40 CFR 1506.11) shall be referred to the Administration's Headquarters for evaluation and decision after consultation with CEQ.

■ 18. Revise § 771.139 to read as follows:

§ 771.139 Limitations on claims.

Notices announcing decisions by the Administration or by other Federal agencies on a transportation project may be published in the **Federal Register** indicating that such decisions are final within the meaning of 23 U.S.C. 139(l). Claims arising under Federal law seeking judicial review of any such decisions by FHWA or FTA are time barred unless filed within 150 days after the date of publication of the limitations on claims notice. Claims arising under Federal law seeking judicial review of any such decisions by FRA are time barred unless filed within 2 years after the date of publication of the limitations on claims notice. These time periods do not lengthen any shorter time period for seeking judicial review that otherwise is established by the Federal law under which judicial review is allowed. This provision does not create any right of judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

PART 774—PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES (SECTION 4(f))

■ 19. Revise the authority citation for part 774 to read as follows:

Authority: 23 U.S.C. 103(c), 109(h), 138, 325, 326, 327 and 204(h)(2); 49 U.S.C. 303; Section 6009, Pub. L. 109–59, Aug. 10, 2005, 119 Stat. 1144; 49 CFR 1.81 and 1.91; and, Pub. L. 114–94, 129 Stat. 1312, Sections 1303 and 11502.

■ 20. Amend § 774.3 by revising footnote 1 to read as follows:

§ 774.3 Section 4(f) approvals.

* * * * *

[1] FHWA Section 4(f) Programmatic Evaluations can be found at

www.environment.fhwa.dot.gov/4f/4fnationwideevals.asp.

* * * * *

■ 21. Amend § 774.13 by revising paragraph (a) to read as follows:

§ 774.13 Exceptions.

* * * * *

(a) The use of historic transportation facilities in certain circumstances:

(1) Common post-1945 concrete or steel bridges and culverts that are exempt from individual review under 54 U.S.C. 306108.

(2) Improvement of railroad or rail transit lines that are in use or were historically used for the transportation of goods or passengers, including, but not limited to, maintenance, preservation, rehabilitation, operation, modernization, reconstruction, and replacement of elements of such railroad or rail transit lines except for:

(i) Stations;

(ii) Bridges or tunnels on railroad lines that have been abandoned or transit lines not in use over which regular service has never operated, and that have not been railbanked or otherwise reserved for the transportation of goods or passengers; and

(iii) Historic sites unrelated to the railroad or rail transit lines.

(3) Restoration, rehabilitation, or maintenance of other types of historic transportation facilities, if the Administration concludes, as a result of the consultation under 36 CFR 800.5, that:

(i) Such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register; and

(ii) The official(s) with jurisdiction over the Section 4(f) resource have not objected to the Administration conclusion in paragraph (a)(3)(i) of this section.

* * * * *

■ 22. Amend § 774.15 by revising paragraph (f)(2) to read as follows:

§ 774.15 Constructive use determinations.

* * * * *

(f) * * *

(2) For projected noise levels:

(i) The impact of projected traffic noise levels of the proposed highway project on a noise-sensitive activity do not exceed the FHWA noise abatement criteria as contained in Table 1 in part 772 of this chapter; or

(ii) The projected operational noise levels of the proposed transit or railroad project do not exceed the noise impact criteria for a Section 4(f) activity in the FTA guidelines for transit noise and vibration impact assessment or the moderate impact criteria in the FRA guidelines for high-speed transportation noise and vibration impact assessment;

* * * * *

■ 23. Amend § 774.17 by revising the definitions for ''Administration'' and ''CE'' to read as follows:

§ 774.17 Definitions.

* * * * *

Administration. The FHWA, FRA, or FTA, whichever is approving the transportation program or project at issue. A reference herein to the Administration means the State when the State is functioning as the FHWA, FRA, or FTA in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 325, 326, 327, or other applicable law.

* * * * *

CE. Refers to a Categorical Exclusion, which is an action with no individual or cumulative significant environmental effect pursuant to 40 CFR 1508.4 and § 771.116, § 771.117, or § 771.118 of this chapter; unusual circumstances are taken into account in making categorical exclusion determinations.

* * * * *

Title 49—Transportation

PART 264—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 24. Revise the authority citation for part 264 to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303; 23 U.S.C. 139; 40 CFR parts 1500 through 1508; 49 CFR 1.81; Pub. L. 112–141, 126 Stat. 405, Section 1319; and Pub. L. 114–94, 129 Stat. 1312, Sections 1432 and 11502.

■ 25. Revise the heading for part 264 to read as set forth above.

■ 26. Revise § 264.101 to read as follows:

§ 264.101 Procedures for complying with the surface transportation project delivery program application requirements and termination.

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.

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 27. Revise authority citation for part 622 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 and 326; 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, 1318, and 1319; and Pub. L. 114–94, 129 Stat. 1312, Sections 1314 and 1432.

[FR Doc. 2017–20565 Filed 9–27–17; 11:15 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0398; FRL–9968–50–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard

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 Maryland Department of the Environment (MDE) on behalf of the State of Maryland in response to EPA's February 3, 2017 Findings of Failure to Submit for various requirements relating to the 2008 8-hour ozone national ambient air quality standards (NAAQS). This SIP revision is specific to nonattainment new source review (NNSR) requirements. 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 description of the state submittal and EPA's evaluation is included in a technical support document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document or is also available electronically within the Docket for this rulemaking action. 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–2017–0398 at *http://www.regulations.gov,* or via email to *aquino.marcos@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mrs. Amy Johansen, (215) 814–2156, or by email at *johansen.amy@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.

Dated: September 14, 2017.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

[FR Doc. 2017–20837 Filed 9–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0383; FRL–9968–31–Region 9]

Approval of California Air Plan Revisions; Anti-Idling Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_X) and particulate matter (PM) from the idling of diesel-powered trucks. We are proposing to approve portions of a state rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 30, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2017–0383 at *https://www.regulations.gov,* or via email to Jeffrey Buss, Rulemaking Office at *Buss.Jeffrey@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, EPA Region IX, (415) 947–4152, *buss.jeffrey@epa.gov.*

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

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

This proposal addresses subsections (c)(1)(A) and (c)(1)(B) of Title 13 California Code of Regulations (CCR) Section 2485, ''Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling'' (collectively, ''Idling Restrictions''). The California Air Resources Board (CARB) adopted Section 2485 on September 1, 2006, and submitted the Idling Restrictions and other portions of Section 2485 to the EPA on December 9, 2011. On May 9, 2012, this submittal was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of the Idling Restrictions. However, other portions of 13 CCR 2485 were subject to a CAA section 209 waiver requirement,[1] and were previously approved into the California SIP.[2]

C. What is the purpose of the submitted rule?

The Idling Restrictions were adopted to reduce emissions of NO_X, reactive organic gases [3] (ROG) and PM.[4] NO_X and VOCs help produce ground-level ozone, smog and PM, which harm

[1] *See* 77 FR 9239 (February 16, 2012).

[2] *See* 81 FR 39423, 39443 (June 16, 2016).

[3] CARB uses the term ROG to refer to a class of VOCs that are sufficiently reactive with sources of oxygen molecules such as NO_X, and carbon monoxide (CO) in the atmosphere in the presence of sunlight. In contrast, the EPA uses the term VOCs, but exempts certain VOCs that are non-reactive or of negligible reactivity in our regulations. *See* 40 CFR 51.100(s).

[4] *See* California Air Resources Board, Staff Report, ''Initial Statement of Reasons: Notice of Public Hearing to Consider Requirements to Reduce Idling Emissions from New and In-Use Trucks, Beginning in 2008,'' September 1, 2005, at page 7.

human health and the environment. In addition, PM, including PM equal to or less than 2.5 microns in diameter ($PM_{2.5}$) and PM equal to or less than 10 microns in diameter (PM_{10}), contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control these pollutants. The Idling Restrictions reduce emissions of these pollutants by limiting the idling of commercial diesel trucks. The EPA's technical support document (TSD) contains more information about these provisions.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). Lastly, in reviewing submittals of state/local prohibitory rules, EPA routinely evaluates whether they satisfy applicable CAA control requirements, including the CAA section 172 requirement for Reasonable Available Control Measures (RACM).

B. Does the rule meet the evaluation criteria?

The Idling Restrictions contain clear, specific and enforceable standards for the operation of covered vehicles, and satisfy the enforceability criterion in CAA section 110(a)(2). These provisions strengthen the SIP by establishing new operating standards that complement the previously approved technology requirements in Section 2485. The Idling Restrictions do not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements, as set forth in CAA section 110(l), and do not modify any existing SIP control requirement in a nonattainment area, in accordance with CAA section 193.

With respect to CAA section 172 RACM requirements, we generally evaluate RACM in the context of a specific SIP, but we have determined that the vehicle operator requirements in the Idling Restrictions constitute RACM-level controls because they limit idling from the primary vehicle engine to 5 minutes. We are unaware of any idling restriction in place in another area that is fewer than 5 minutes. The TSD has more information on our evaluation.

C. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because we believe it fulfills all relevant requirements. We will accept comments from the public on this proposal until October 30, 2017. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the portions of title 13 CCR 2485 described above. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: September 7, 2017.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2017–20963 Filed 9–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2017–0517; FRL–9968–65–Region 7]

Approval of Iowa Air Quality Implementation Plans; Elements of the Infrastructure SIP Requirements for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from the State of Iowa for the 2012 Annual Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). Infrastructure SIPs address the applicable requirements of Clean Air Act (CAA) section 110, which requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by the EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

In the ''Rules and Regulations'' section of this issue of the **Federal Register**, we are approving the state's SIP revisions 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: Comments must be received on or before October 30, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2017–0517, to *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219 at (913) 551–7039, or by email at *hamilton.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: This document proposes to take direct final action on Iowa's infrastructure SIP submissions for the 2010 NO_2 NAAQS. We have published a direct final rule approving the State's SIP revisions in the ''Rules and Regulations'' section of this issue of the **Federal Register**, because we view this as a noncontroversial action and anticipate no relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. A detailed technical support document (TSD) is included in this rulemaking docket to address the following: A description of Clean Air Act section 110(a)(1) and (2) infrastructure SIPs; the applicable elements under sections 110(a)(1) and (2); EPA's approach to the review of infrastructure SIP submissions, and EPA's evaluation of how Iowa addressed the relevant elements of sections 110(a)(1) and (2). 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. 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. For further information, please see the information provided in the **ADDRESSES** section of this document.

List of Subjects in 40 CFR Part 52

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

Dated: September 20, 2017.

Cathy Stepp,

Acting Regional Administrator, Region 7.

[FR Doc. 2017–20825 Filed 9–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2017–0267; FRL–9968–60–Region 7]

Approval of Implementation Plans; State of Iowa; Elements of Infrastructure SIP Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from the State of Iowa for the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). Infrastructure SIPs address the applicable requirements of Clean Air Act (CAA) section 110, which requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by the EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

In the ''Rules and Regulations'' section of this issue of the **Federal Register**, we are approving the state's SIP revisions 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: Comments must be received on or before October 30, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2017–0267, to *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web,

cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219 at (913) 551–7039, or by email at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: This document proposes to take direct final action on Iowa's infrastructure SIP submissions for the 2010 SO_2 NAAQS. We have published a direct final rule approving the State's SIP revision (s) in the ''Rules and Regulations'' section of this issue of the **Federal Register**, because we view this as a noncontroversial action and anticipate no relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. A detailed Technical Support Document (TSD) is included in this rulemaking docket to address the following: A description of Clean Air Act section 110(a)(1) and (2) infrastructure SIPs; the applicable elements under sections 110(a)(1) and (2); EPA's approach to the review of infrastructure SIP submissions, and EPA's evaluation of how Iowa addressed the relevant elements of sections 110(a)(1) and (2). 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. 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. For further information, please see the information provided in the **ADDRESSES** section of this document.

List of Subjects in 40 CFR Part 52

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

Dated: September 20, 2017.

Cathy Stepp,

Acting Regional Administrator, Region 7.

[FR Doc. 2017–20965 Filed 9–28–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2016–0030; 4500030113]

RIN 1018–BB50

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule to List Kenk's Amphipod

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule to list the Kenk's amphipod (*Stygobromus kenki*), an invertebrate from the District of Columbia, Maryland, and Virginia as an endangered species under the Endangered Species Act (Act) as amended. This withdrawal is based on our conclusion that the threats to the species as identified in the proposed rule are not as significant as we previously determined and the proposed listing is not warranted. We base this conclusion on our analysis of new information concerning the results of new surveys, current and future threats, and conservation efforts. We find the best scientific and commercial data available indicate that the Kenk's amphipod does not meet the statutory definitions of an endangered or threatened species. Therefore, we are withdrawing our proposed rule to list the Kenk's amphipod as an endangered species.

DATES: The proposed rule that published on September 30, 2016 (81 FR 67270), is withdrawn on September 29, 2017.

ADDRESSES: The withdrawal of our proposed rule and supplementary documents are available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R5–ES–2016–0030, and at *https://www.fws.gov/chesapeakebay/.* Comments and materials we received, as well as supporting documentation we used in the preparation of this withdrawal, are available for public inspection by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD 21401, by telephone 410–573–4577 or by facsimile 410–269–0832.

FOR FURTHER INFORMATION CONTACT: Genevieve LaRouche, Field Supervisor, U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD 21401, by telephone 410–573–4577 or by facsimile 410–269–0832. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish this document. Under the Endangered Species Act (Act), if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. On September 30, 2016, we issued a proposed rule to add the Kenk's amphipod as an endangered species to the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (50 CFR 17.11(h)). Our proposal was based on threats due to poor water quality, erosion, and sedimentation resulting from urban runoff at the Maryland and the District of Columbia locations and the effects of small population size and climate change at all known locations (81 FR 67270). This document withdraws our proposed rule to list the Kenk's amphipod as an endangered species under the Act because we have now determined that the threats to the species are not as significant as we previously determined and additional populations have been discovered in Virginia with threats that will be reduced or eliminated through conservation measures; therefore, listing is not warranted.

The basis for our action. Under section 4(a)(1) of the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We have determined that the threats to the Kenk's amphipod are not as significant and the species is more widely distributed than we previously determined and that listing is not warranted. Therefore, this document withdraws our proposed rule to list the Kenk's amphipod as an endangered species under the Act.

Peer review and public comment. We sought comments from five independent specialists to ensure that our

designation is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal and received comments from all five. We also considered all comments and information received during the comment period.

Background

Previous Federal Actions

Please refer to the proposed listing rule for the Kenk's amphipod (81 FR 67270; September 30, 2016) for a detailed description of previous Federal actions concerning this species.

On June 7, 2017, the Department of Defense, U.S. Army Garrison, Fort A.P. Hill, finalized their revised Integrated Natural Resources Management Plan (INRMP) to include conservation measures for the Kenk's amphipod (Fort A.P. Hill 2017, pp. 5, 8, 8–56, 9–1–9–4, 9–31–9–34; Andersen 2017a, pers. comm.; Andersen 2017b pers. comm.).

Species Description

Please refer to the proposed listing rule for the Kenk's amphipod (81 FR 67270; September 30, 2016) for a detailed summary of species' information; however, we note key pieces of updated information below.

The Kenk's amphipod (*Stygobromus kenki*) is a moderately small subterranean crustacean, growing to a maximum length of approximately 0.22 inches (in) (5.5 millimeters (mm)), that can co-occur with other amphipods, such as the Potomac ground water amphipod (*S. tenuis potomacus*), Hay's spring amphipod (*S. hayi),* Tidewater amphipod (*S. indentatus*), and Rappahannock spring amphipod (*S. foliatus*). Subterranean species like the Kenk's amphipod may live for 4 to 6 years, or even longer (Foltz and Jepson 2009, p. 2; Culver 2016, pers. comm.).

Accurate identification of the Kenk's amphipod can occur only when a specimen is removed from the seepage spring site (hereafter referred interchangeably as seepage spring, seep, spring, or site depending upon the reference), and preserved in alcohol or other fixing agent for identification by a species expert who removes legs and other appendages from the specimen for microscopic examination. This identification method is the best scientific method available. Because the laboratory identification results in mortality, and the species co-occurs in at least one site with the federally listed Hay's spring amphipod, the Service has been judicious in limiting the frequency and number of specimens removed from known sites.

Habitat

Amphipods of the genus *Stygobromus* occur in ground water and ground water-related habitats (*e.g.,* caves, seeps, small springs, wells, interstices, and, rarely, deep ground water lakes). The Kenk's amphipod is found in wooded areas where ground water emerges to form seepage springs (Holsinger 1978, p. 39). More specifically, Culver and Pipan (2014, pp. 22–23) refer to this habitat as the hypotelminorheic. Hypotelminorheic is described as habitats: (1) With a perched aquifer fed by subsurface water that creates a persistent wet spot; (2) underlain by a clay or other impermeable layer typically 5 to 50 centimeters (cm) (2 to 20 in) below the surface; and (3) rich in organic matter compared with other aquatic subterranean habitats. The water supplying the springs infiltrates to the ground water from precipitation and runoff into the catchment (*e.g.,* recharge or drainage) areas. The water exits these habitats at seepage springs. The shading, hydrology, and organic matter found in these woodlands are considered important factors in maintaining suitable habitat (*i.e.,* for feeding, breeding, and sheltering) for the species.

Springs known to currently support the Kenk's amphipod are found in forested areas with moderate to steep slopes, adjacent to streams, and overlying the Wissahickon geologic formation in the Piedmont of Maryland and the District of Columbia and in the Calvert formation just above the Nanjemoy formation in the upper Coastal Plain of Virginia. The Kenk's amphipod has been found in the dead leaves or fine sediment submerged in the waters of its seepage spring outflows (Holsinger 1978, p. 130). The species will move between the surface and subterranean portions of the spring habitat, but it is unknown when or how often that movement occurs (Kavanaugh 2009, p. 3).

Our previous understanding of seepage springs drainage areas was that these springs typically drain an area of less than 10,000 square meters (2.5 acres (ac); 1 hectare (ha)). The Service contracted with the Maryland Geological Survey to delineate the recharge areas of the six Kenk's amphipod's seepage spring sites in Maryland and the District of Columbia (Burnt Mill Spring #6, East Spring, Kennedy Street Spring, Sherrill Drive Spring, Coquelin Run Spring, and Holsinger Spring) (Staley 2016, pp. 1–46; Staley 2017, pers. comm.). In addition, the Maryland Geological Survey conducted electrical resistivity surveying to determine elevations of bedrock or clay that may be perching the water table, and to detect elevation of the water table of three of the Washington metropolitan area seepage springs (Burnt Mill Spring #6, East Spring, and Kennedy Street Spring) (Staley 2016, pp. 1–46). The surface watershed area of the springs ranged from the largest area of 22,055 square meters (m^2) (237,402 square feet (ft^2) (Holsinger Spring) to the smallest of 2,345 m^2 (25,241 ft^2) (East Spring) (Staley 2016, pp. 1–46; Staley 2017, pers. comm.).

However, these watershed boundary calculations do not accurately reflect the extent and magnitude of the subsurface ground water flow to the springs, since fracture zones in the bedrock underlying the saturated zones may extend a spring's ground water source beyond the surface watershed boundaries. The saturated zones supplying water to these springs appear to extend to a depth of 10 meters (m) (32.8 ft) or more at locations near each of these springs (Staley 2016, pp. 1–46); they are underlain by bedrock or dense saprolite (material derived from weathered bedrock). This finding suggests that at some locations the ground water source for these seepage springs may not be as shallow as described by Culver and Chestnut (2006, p. 2), and could be influenced by a larger area than the surface catchment area. This finding may also mean that the Kenk's amphipod could be present at times in deeper subsurface water or in fractured portions of bedrock.

Distribution and Relative Abundance

Current Known Range and Distribution

The Kenk's amphipod has been documented from a total of 13 seepage spring sites: East Spring, Holsinger Spring, Sherrill Drive Spring and Kennedy Street Spring in Rock Creek Park, managed by the National Park Service (NPS), in the District of Columbia; Coquelin Run Spring (privately owned) and Burnt Mill Spring #6 (county owned) in Montgomery County, MD; Upper Mill #2, Mill #4, Mill #5, Mill Creek #56, Mill Creek #58, and Mount Creek #2 on the U.S. Army Garrison's Fort A.P. Hill, in Caroline County, VA; and Voorhees Nature Preserve (owned by The Nature Conservancy (TNC)) in Westmoreland County, VA (see figure 1). While we focus our analysis on the Kenk's amphipod's known sites, we consider it likely that additional springs supporting the species could be found in Virginia because a survey of only a small portion of the potential suitable habitat outside of Fort A.P. Hill resulted in the

discovery of the Voorhees Nature Preserve site. Surveyors had access to only publicly owned lands; potential suitable habitat also occurs on private land. In Virginia, 77 springs inside Fort A.P. Hill and 22 springs outside of Fort A.P. Hill in 3 counties (Caroline, King George, and Westmoreland) were surveyed. Two new sites were found on Fort A.P. Hill in 2017 (Mill Creek #56 and #58) with more intensive surveys. In Maryland, no new Kenk's amphipod sites were located during more widespread surveys of suitable habitat on publicly owned lands (129 springs in 5 counties (Anne Arundel, Prince George's, Charles, Calvert, and St. Mary's) in 2017.

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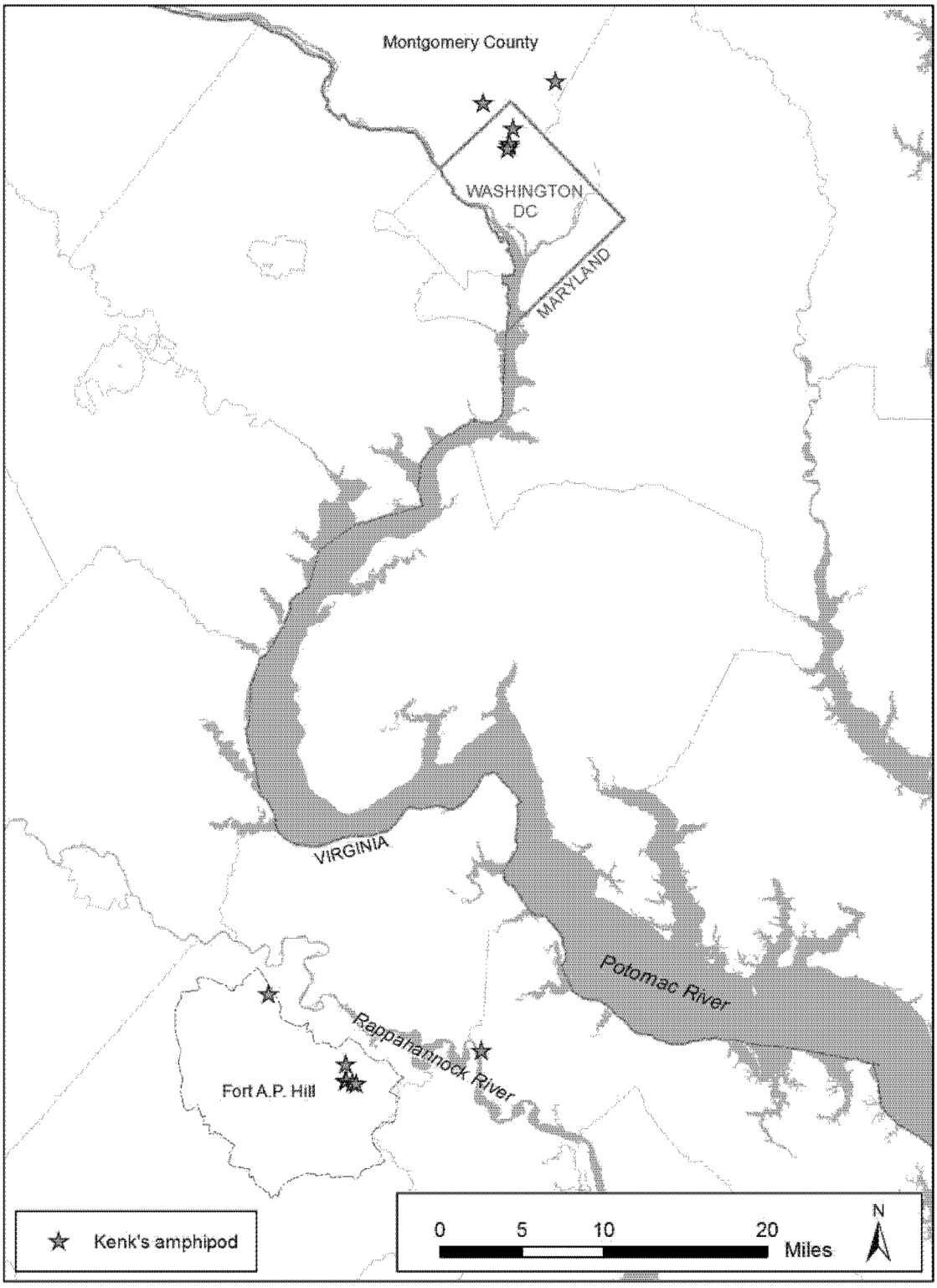

Figure 1. Distribution of the 13 known Kenk's amphipod seep sites in 2017. Due to scale, some sites are obscured by the symbols of others.

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Relative Abundance

There are no reliable total population numbers for Kenk's amphipod sites due to sampling difficulties (*e.g.,* flow conditions) and the lack of information on the portion of the population that may remain in the springs' ground water supply (Feller 2005, p. 10). However, because surveying in the Washington metropolitan area has been conducted using systematic and consistent methodology over many years, often by the same individuals, the numbers of Kenk's amphipod individuals observed and the number of conducted surveys required to find the species are considered to be the best available data and provide a reliable indication of the species' relative abundance.

The species is typically found in small numbers and then only when ground water levels are high and springs are flowing freely, conditions that cause the Kenk's amphipod to be transported to the surface. These conditions typically occur during the spring season, except during especially dry years. Given the small size of the shallow ground water aquifers supporting the sites occupied by this species, and the known characteristics of subterranean invertebrates, it is probable that each of the Kenk's amphipod populations has always been small (Hutchins and Culver 2008, pp. 3–6).

Although specimens were not collected and identified to the species level, *Stygobromus sp.,* including some in the right size range for the Kenk's amphipod, were observed during site reconnaissance visits between 2004 and 2012 in several of the known Kenk's amphipod Washington metropolitan area spring habitats (Yeaman 2012, pers. comm.). In addition, visual inspections during this same time period indicated that most of the sites continued to appear to be suitable habitat, leading us to conclude that the Kenk's amphipod was extant at least at Burnt Mill Spring #6, Kennedy Street Spring, and East Spring (Feller 2015, pers. comm.). However, actual identifications of specimens collected during surveys conducted in 2015 and 2016 (Feller 2016b, pers. comm.) did not result in Kenk's amphipod being found (see below).

Prior to 2015, all Kenk's amphipod specimens were discovered on the first or second survey conducted at all known sites. In 2015 and 2016, the Kenk's amphipod was confirmed at only one of the Washington metropolitan area spring sites, Coquelin Run Spring, despite all of the sites being sampled multiple times during these 2 years (see table 1 below) (Feller 2016b, pers. comm.; Feller 2016c, pers. comm.). Additionally, an environmental DNA (eDNA) study was conducted in 2016 (Niemiller *et al.* 2016, pp. 1–7) for several amphipod species, including the Kenk's amphipod, to determine potential presence of the species in springs in the Rock Creek watershed.

Individual Kenk's amphipods were collected from Fort A.P. Hill for DNA sequencing since no individuals could be found in the Washington metropolitan area at the time (spring/summer 2016) comparative samples were required for the study (Niemiller *et al.* 2016, p. 2). Water tested in the Washington metropolitan area did not detect the Kenk's amphipod eDNA (Niemiller *et al.* 2016, p. 6). However, we cannot conclude that Kenk's amphipods were absent at those sites. The abundance of the Kenk's amphipod may not be high enough in the springs to amplify DNA in the water samples, or the DNA from the Fort A.P. Hill animals may be different enough from the Washington metropolitan area animals to not be detected in the Rock Creek water samples. Therefore, it is unclear without additional survey effort whether the species may be extirpated at Burnt Mill Spring #6, Kennedy Street Spring, and East Spring, although the best available data show a decrease in observed individuals at these sites (see table 1).

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Table 1. Survey results for the Kenk's amphipod.

Site Name (owner)	1960s			1990s		2000 to 2006						Current			
	1966	1967	1968	1994	1995	2000	2001	2003	2004	2005	2006	2014	2015	2016	2017
East Spring (NPS)	1 of 1 (3)	5 of 5 (3 to 21)	1 of 1 (1)	0 of 2*	0 of 1*	0 of 1	2 of 3 (1 and 2)	N/A	N/A	N/A	N/A	N/A	0 of 3	0 of 4	N/A
Holsinger Spring (NPS)	N/A	1 of 1 (24)	N/A	N/A	N/A	N/A	N/A	0 of 1	N/A	N/A	N/A	N/A	0 of 3	N/A	N/A
Sherrill Drive Spring (NPS)	N/A	N/A	N/A	0 of 1	1 of 2 (3)	0 of 1	1 of 2 (1)	0 of 1	N/A	N/A	N/A	N/A	0 of 3	0 of 4	N/A
Kennedy Street Spring (NPS)	N/A	N/A	N/A	N/A	N/A	N/A	1 of 2 (1)	0 of 1	N/A	N/A	N/A	N/A	N/A	0 of 4	N/A
Coquelin Run Spring (Private)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1 of 1 (2)	1 of 1 (2)	N/A	N/A	N/A	1 of 4 (1)	N/A
Burnt Mill Spring #6 (County Park)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1 of 1 (5)	0 of 1	N/A	0 of 3	0 of 6	0 of 2
Upper Mill Creek #2 (DoD)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1 of 4 (1)	N/A	N/A	1 of 1 (6)
Mill Creek #4 (DoD)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1 of 6 (1)	N/A	N/A	1 of 1 (1)
Mill Creek #5 (DoD)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2 of 7 (4)	N/A	N/A	N/A
Mill Creek #56 (DoD)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1 of 1 (16)
Mill Creek #59 (DoD)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1 of 1 (8)
Mount Creek #2 (DoD)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2 of 6 (1)	N/A	N/A	1 of 1 (4)
Voorhees Nature Preserve (TNC)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1 of 1 (1)

*Individuals in the size range of the Kenk's amphipod were observed but not collected for verification (Feller 1997). The first pair of numbers (e.g., "1 of 2") indicates the number of site visits where the species was detected compared to the total number of site visits that year. The numbers in parenthesis "()" are the total number of Kenk's amphipods collected. The N/A indicates no surveys were conducted at the site in that year.

Summary of Comments and Recommendations

In the proposed rule published on September 30, 2016 (81 FR 67270), we requested that all interested parties submit written comments on the proposal by November 29, 2016. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. A newspaper notice inviting general public comment was published in USA Today on October 5, 2016. We did not receive any requests for a public hearing.

During the 60-day public comment period (September 30, 2016, to November 29, 2016), we received public comments from 10 individuals or organizations. Of these, seven were from individuals, including five peer reviewers, one was from a Federal agency, and two were from nongovernmental organizations (NGOs). All the commenters were generally supportive of the proposed listing, but only 8 of the 10 provided substantive information. All substantive information provided during the comment period is summarized below and has either been incorporated directly into this final determination or is addressed in the response to comments below.

Comments From Peer Reviewers

(1) *Comment:* Two peer reviewers agree with us that few if any studies exist that specifically examine critical thresholds for flow, water permanence, nutrient or contaminant loading, or the tolerance of close relatives of the Kenk's amphipod to pollutants and toxicants. One of the reviewers suggests that additional studies conducted on the basic biology and population size of the Kenk's amphipod would be helpful, noting that the more common and widespread Potomac ground water amphipod could be used as a surrogate species.

Our Response: The Act requires that the Service make listing determinations based solely on the best scientific and commercial data available. When we published the proposed rule on September 30, 2016 (81 FR 67270), we relied on the best quantitative and qualitative data available at that time to assess the Kenk's amphipod's status.

(2) *Comment:* One peer reviewer states that the proposed listing underestimates the potential effect due to urbanization stress for the Washington metropolitan area populations, given the species' isolated populations. More specifically, this reviewer indicates that our analysis contained insufficient discussion of increased conductivity (salinity) and that the risk from potential sewage leakage may have been underestimated, in part because we did not consider that, in addition to increasing conductivity and nutrient loading, sewage leaks include ''pharmaceuticals, personal care products, and home-use chemicals that even at very low levels can disrupt endocrine and immune systems.'' Another peer reviewer provided additional references on several studies in the Rock Creek watershed showing the occurrence of pesticides, organic wastewater compounds, and metals in surface water and bed sediment that may be related to the degradation of habitat (Anderson *et al.* 2002; Miller *et al.* 2006; Koterba *et al.* 2010; Phelan and Miller 2010).

Our Response: See the Factor A section below addressing *Water Quality/Quantity Degradation Due to Chronic Pollution of Urban/Suburban Runoff* for added discussion regarding the effects of conductivity and the presence of pharmaceuticals, personal care products, and home-use chemicals from sewer leaks. Additional references on several studies in the Rock Creek watershed showing the occurrence of pesticides, organic wastewater compounds, and metals in surface water and bed sediment that may be related to the degradation of habitat were also added to the final determination.

(3) *Comment:* One peer reviewer states that existing regulatory mechanisms are inadequate to address issues related to Factor A and that this is largely because many of the recharge areas for the seepage springs in the Washington metropolitan area extend outside the jurisdiction of Federal agencies.

Our Response: Many of these seepage springs have recharge areas extending into private lands where Federal agencies have little jurisdiction. While the existing regulatory mechanisms do not fully ameliorate the stressors affecting the species' sites in the Washington metropolitan area, we have concluded that those stressors do not rise to the level of the species being warranted for listing as an endangered or threatened species (See the *Summary of Factor A* and *Kenk's Amphipod Determination of Status Throughout All of Its Range* sections below).

(4) *Comment:* One peer reviewer states that the proposed rule underestimates the potential threat of warming of the shallow ground water habitats supporting this amphipod ''because the impacts of pollutants on Kenk's amphipod may likely be compounded by even a slight increase in water temperature due to a potential increase of uptake of pollutants in concert with increased metabolic activities.''

Our Response: We have included additional language in the final determination indicating the effects of increased water temperature on the uptake and metabolism of pollutants—see Factor E, *Effects of Climate Change.*

(5) *Comment:* Two peer reviewers comment on the threat of small population dynamics and indicate that the proposed rule was missing a discussion about metapopulation structure. One reviewer states that the assumption of small population size and genetic isolation among Kenk's amphipod populations is untested and that some analyses of DNA sequence information will shed light on the species' metapopulation structure and the potential for migration of individuals among sites. The second reviewer states that many animal and plant species exist in low population numbers, but possess adequate levels of genetic diversity to maintain their populations. This reviewer also states that because the species' ability to move between sites is considered low or perhaps nonexistent in the opinion of species experts, as discussed in the proposed rule, the Kenk's amphipod may represent isolated populations with little potential for either recolonization or colonization of suitable habitat.

Our Response: While we agree that the assumption of small population size and genetic isolation among Kenk's amphipod populations is untested, the best available data indicate that the effect of small population dynamics may be contributing to the species' viability, particularly in the Washington metropolitan area. Additionally, it is difficult to study the DNA sequences of Kenk's amphipods at any sites other than Fort A.P. Hill sites, given the paucity of individuals collected and the preservation method used to store the collected individuals.

Comments From the Public

(6) *Comment:* One commenter considers the discussion of stressors incomplete because it does not include the ''mounting circumstantial evidence that seep-inhabiting *Stygobromus* are susceptible to changes in the forest canopy and understory.'' This commenter also suggests that the species' very shallow ground water sites are in some ways more connected to the forest floor than to base-level streams.

Our Response: We have added an assessment of potential activities that could change the forest canopy and understory in Factor A under *Other*

Habitat Considerations. This issue was not mentioned in the proposed rule because it had not been identified as occurring at any of the known Kenk's amphipod sites.

(7) *Comment:* One commenter, familiar with the management of Fort A.P. Hill, provided additional information about the identity of two springs, the level of stressors/threats to the Kenk's amphipod at the installation, and how the species would be addressed under the Sikes Act.

Our Response: We have revised the final determination, as appropriate, to reflect these comments. The Service appreciates the cooperation of the Army and looks forward to working with them to protect this species and its habitat on Fort A.P. Hill.

(8) *Comment:* One commenter indicates that a number of projects pose threats to the species such that the species warrants listing and that reinitiation of conferencing under section 7(a)(4) of the Act is appropriate. This commenter provides multiple documents supporting their position; however, only one document was new information—the final report on the *Stygobromus* eDNA study.

Our Response: Section 7 consultations under the Act are outside the scope of this final listing determination. However, to the extent that it is relevant here, we note that we completed the appropriate level of consultation on the projects and concluded that there would be no effect to the Kenk's amphipod or its habitat. All of the commenter's supporting information, with the exception of their proposed rule comment letter and the new eDNA report referenced above, were included in our earlier consultations. Our subsequent review of the eDNA report, as part of the analysis for this final listing determination, finds that the report provides no evidence to support the commenter's position because no Kenk's amphipod DNA was detected in any of the action areas related to the consultations.

(9) *Comment:* One commenter states that susceptibility of Kenk's amphipod sites to destruction by hikers on social trails near the seeps should be more fully discussed. The commenter also indicated that the NPS has taken no affirmative, proactive steps to divert hikers and other recreational traffic away from these seeps.

Our Response: There is no evidence that the occasional use of social trails has had any effect on the Kenk's amphipod or caused any disturbance to the seep habitat. While the NPS has not found a practical way to close most social trails, they have taken steps to prevent designated trails from being built in areas that could affect the Hay's Spring or Kenk's amphipods.

(10) *Comment:* One commenter raises concerns with the Service's and NPS's compliance with section 7 of the Act and with NPS's implementation of Rock Creek Enabling Legislation.

Our Response: The Service and NPS have met our respective section 7 regulatory obligations for the Hay's Spring and Kenk's amphipods (see the *Water Quality/Quantity Degradation Due to Chronic Pollution of Urban/Suburban Runoff* section of the proposed rule (81 FR 67270, September 30, 2016) and the Candidate Notices of Review (75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015).

(11) *Comment:* One commenter indicates that the proposed rule should more fully discuss agencies' failure to clean up water pollution in the Rock Creek watershed, specifically citing NPS's use of pesticides and the District of Columbia government's and NPS's use of road salt in the watershed.

Our Response: We analyzed the use of pesticides in Rock Creek Park and determined that dimilin, which can be toxic to crustaceans, is not being used in the park. Other pesticides that may be toxic to amphipods are used on the Rock Creek Park Golf Course, but because the golf course is not within the recharge areas for the seepage springs known to support the Kenk's amphipod, this activity is not considered a stressor for the species. The NPS has limited or discontinued the use of road salts at some locations, including Sherrill Drive, Ross Drive, Morrow Drive, and Ridge Road, where this practice might be a problem for the Hay's Spring or Kenk's amphipods (Bartolomeo 2017, pers. comm.). The use of road salts may affect one or more locations and we have added additional discussion on this topic in the final listing determination (see Factor A, *Water Quality/Quantity Degradation Due to Chronic Pollution of Urban/Suburban Runoff*).

(12) *Comment:* One commenter questioned the rationale behind being able to collect up to 10 specimens for scientific collection.

Our Response: The majority of amphipods collected at sites are the more common species, *S. tenuis.* However, the Service has allowed larger numbers to be collected during 2016 surveys in the Washington metropolitan area because none of the specimens of appropriate size collected in the 2015 surveys have been identified to be the Kenk's amphipod. These protocols are followed to minimize effects to the species. Because the occurrence of subterranean invertebrates at spring emergence sites likely represents only a portion of the actual underground population, the Service has considered the collecting procedures (Feller 1997, p. 2) to be nondetrimental to the populations.

Summary of Changes From the Proposed Rule

Based upon our review of the public comments, comments from other Federal and State agencies, peer review comments, and new relevant information that has become available since the publication of the proposal, we have reevaluated our proposed listing rule and made changes as appropriate. This document differs from the proposal in the following ways:

(1) Based on our analyses of the potential threats to the Kenk's amphipod and additional survey data obtained in 2017, we have determined that the species no longer meets the definition of a threatened or an endangered species. This document withdraws our proposed rule as published on September 30, 2016 (81 FR 67270).

(2) We have added a discussion of Ongoing and Future Conservation Efforts below. Fort A.P. Hill's INRMP (Fort A.P. Hill 2017, entire) is discussed in this section.

(3) We have incorporated: (a) A more detailed impervious cover analysis using the Watershed Boundary Dataset (U.S. Geological Survey (USGS) 2014a, entire) and the 2011 National Land Cover Dataset (USGS 2014b, entire); (b) reference to an eDNA study conducted in 2016 (Niemiller *et al.* 2016, pp. 1–7); (c) reference to a hydrogeology electrical resistivity study conducted in 2016 that improves our understanding of the surface catchment area and the subsurface area surrounding the Kenk's amphipod sites (Staley 2016, pp. 1–46); (d) water quality sampling results conducted in 2016 and 2017 by the Service; and (e) results from suitable habitat surveys conducted in 2017.

Ongoing and Future Conservation Efforts

Below we review conservation efforts for the Kenk's amphipod, including those in Fort A.P. Hill's recently revised INRMP. In our proposed rule, we described the conservation efforts that are already occurring or were planned to occur in the Washington metropolitan area; and there are no changes to this information based on peer review and public comments. We have also

completed an analysis of the newly initiated conservation efforts at Fort A.P. Hill pursuant to our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100, March 28, 2003).

Based on information provided in our proposed rule, Fort A.P. Hill revised its existing INRMP in 2017 to include the Kenk's amphipod and established conservation measures (*i.e.,* expanded buffer areas) to address the identified threats (Fort A.P. Hill 2017, p. 9–32). The INRMP includes the most recent Kenk's amphipod survey information and establishes conservation areas that will be managed with limited surface disturbance and avoidance buffers (Fort A.P. Hill 2017, pp. 9–32 to 9–34), as further described below. In addition, Fort A.P. Hill has agreed to include expanded buffer areas around any future new locations of the species. The INRMP will be revised as part of the next annual review process to reflect that continued implementation of buffers would be subject to mission requirements (Andersen 2017b, pers. comm.). The INRMP is comprehensively updated every 5 years, with review and minor amendments occurring annually. More significant updates will occur if and when new biological information becomes available or if Fort A.P. Hill's mission requirements change. The expanded buffer areas for the Kenk's amphipod designated in the INRMP are designed to maintain the species' redundancy, resiliency, and representation on Fort A.P. Hill, thus significantly contributing to the species' viability (see table 3 and the Cumulative Effects section below).

Fort A.P. Hill consists of 76,000 acres (30,756 ha) of land with 65,000 acres (26,304 ha) of forest (Fort A.P. Hill 2017, p. 2–1). The mission of the base is to ensure soldiers are fully prepared to fight and win the Nation's wars (Fort A.P. Hill 2017, p. 12–2). Currently, 98 percent of the base is undeveloped operational training lands. Training occurs year round for both active and reserve troops of the different branches of the military (Fort A.P. Hill 2017, pp. 2–2 to 2–3).

Management buffers are established around Kenk's amphipod seeps to ensure the integrity of surficial habitats and water quality from potential impacts associated with land disturbance activities. Buffers are site specific and are determined based on the size of the seep area, surrounding terrain, hydrology, and contiguity of surrounding habitats. The buffer areas for each seep generally exceed 200 ft (0.06 kilometers (km)) all around, ranging in size from 1 to 6 acres (0.40 to 2.43 ha) (average buffer area is approximately 2.3 acres (0.93 ha)). These buffers are also complemented by protections afforded to each site by adjacent wetlands and the undulating terrain of the surrounding landscape that provide additional habitat protections from disturbance activities. Within the buffers, land-disturbing activities (*e.g.,* construction, land management (including pesticide application)) and ground-water-disturbing activities (*e.g.,* drilling wells) are prohibited unless Fort A.P. Hill coordinates with the Service to determine ways to minimize impacts to the Kenk's amphipod (Fort A.P. Hill 2017, pp. 9–32 to 9–33).

All mounted military training maneuvers (*i.e.,* those using tracked and wheeled vehicles) are restricted to established roads and designated open areas throughout the installation, and all tactical and nontactical vehicles must also use established stream crossings. Dismounted military maneuvers (*i.e.,* those on foot) occur throughout the installation, including the training areas where Kenk's amphipod seeps occur. Kenk's amphipod seeps occur in the most undeveloped portion of the installation surrounded by an abundance of natural habitats characterized by rolling and often steep terrain. The seeps themselves where the Kenk's amphipod has been found represent an exceptionally small fraction (0.00005 percent) of the training lands and are typically less often used for military training than other areas due to their isolated nature. Soldiers are precluded from bivouacking (*i.e.,* camping) or digging within the buffer areas. Maps denoting the location of Kenk's amphipod buffer areas are provided to Range Operations for the scheduling and coordination of training activities in these areas. No military training operations occur in Kenk's amphipod seep areas or buffers that use petroleum operations (*e.g.,* transport, storage, and handling) or chemical training (Fort A.P. Hill 2017, p. 9–33).

Dirt and gravel trails are the primary transportation routes throughout the training areas where Kenk's amphipod seeps can be found. Tactical and nontactical vehicle traffic on these trails is intermittent and is typically of low duration and intensity. The trails do not get chemically treated in the winter months nor are these trails designated for or used as transportation routes for industrial hazardous materials (*i.e.,* tanker trucks). Routine recurring maintenance activities regularly conducted on installation trails include tree limbing, surface grading, application of surface material and surface and ditch stabilization. These types of maintenance activities occur as needed on these already established trails within the buffers to ensure safe access to military lands. Stabilization activities are the only type of maintenance activity that requires the application of erosion and sediment control procedures. Where stabilization of trails is required within Kenk's amphipod buffers, stabilization efforts shall be in compliance with Virginia Erosion and Sediment Control procedures (VDEQ 1992). Of the six known Kenk's amphipod sites, only two have trails within them, and these trails constitute only 1.8 mi (2.89 km) (0.3 percent of total trail miles), half of which is closed to through traffic. Trail maintenance activities are anticipated to occur on trails within Kenk's amphipod buffers less than once every 5 years. Large-scale trail improvements (*e.g.,* culvert installation/replacement, trail widening) within Kenk's amphipod buffers would require discussion with the Service to minimize impacts to the species and its habitat (Fort A.P. Hill 2017, pp. 9–32 to–9–33).

At Fort A.P. Hill, forest management activities, including timber harvest and controlled burns, occur throughout much of the facility, including areas along Mill Creek and Mount Creek supporting Kenk's amphipod sites. No land-disturbance activities such as forest management or vegetation/habitat management will be conducted within established buffers without discussion with the Service. The seeps also occur in the non-live-fire portion of the base, meaning that wildfires are significantly less of a threat to the species or its habitat because no live rounds are used in those areas that can serve as ignition sources (Applegate 2016, pers. comm.). Additionally, when prescribed burns are used in areas adjacent to the seeps, Fort A.P. Hill will keep fire out of the buffers to the extent practicable. If a fire entered a buffer, Fort A.P. Hill would document any impacts to the buffers and the seeps (Andersen 2017c, pers. comm.).

Recreational activities are allowed within Kenk's amphipod buffer areas because installation regulations provide sufficient protections to ensure the conservation of the species. Hunting is the only recreational activity authorized in areas where three of the known Kenk's amphipod sites occur. However, strict hunting regulations severely limit the numbers of hunters allowed in an area at any given time and restrict the timing and duration for hunting. Consequently, Fort A.P. Hill is only available for hunting less than 16 percent of the year. The Kenk's amphipod sites are unlikely to

experience adverse effects from hunting given: The limited availability of the Fort A.P. Hill landscape to hunting by the public in general; regulations prohibiting hunters from camping, digging, or using any motorized transportation (*e.g.,* all-terrain vehicles, utility-terrain vehicles); that the Kenk's amphipod buffers and seep areas represent an exceptionally small amount (0.014 percent and 0.00005 percent) of the huntable areas of Fort A.P. Hill, respectively; and seeps and streams are typically avoided by hunters due to the difficulty in traversing them and the adjacent slopes. Fort A.P. Hill has offered public hunting opportunities for decades, and there has not been any evidence of adverse impacts observed at any stream, seep, or wetland to date, including the known Kenk's amphipod sites (Fort A.P. Hill 2017, p. 9–34).

Fort A.P. Hill has agreed to continued commitment to the conservation measures (buffers) identified in the 2017 INRMP regardless of the Kenk's amphipod Federal listing status, pending any currently unknown change in mission requirements (Andersen 2017a, pers. comm.). However, should the species not warrant listing under the Act, some monitoring efforts for the species could be reduced (Andersen 2017a, pers. comm.; Andersen 2017b pers. comm.).

Based on past and current primary uses of the base (forest management, recreational use, and military maneuvers), the acreage of the base, the limited area occupied by the species, including the buffers, and the habitat characteristics (mature forest on steep or rolling topography, and often adjacent to wetland areas), and the location of the seep sites (*e.g.,* on isolated areas of the base), the Service concludes that there is a low risk of sites being adversely affected even if mission requirements changed.

The INRMP would result in the protection of 6 out of the 13 (46 percent) known Kenk's amphipod locations.

PECE Analysis

The purpose of PECE is to ensure consistent and adequate evaluation of recently formalized conservation efforts when making listing decisions. The policy provides guidance on how to evaluate conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness. The evaluation focuses on the certainty that the conservation efforts will be implemented and the certainty that the conservation efforts will be effective. The policy presents nine criteria for evaluating the certainty of implementation and six criteria for evaluating the certainty of effectiveness for conservation efforts. The certainty of implementation and the effectiveness of a formalized conservation effort may also depend on species-specific, habitat-specific, location-specific, and effort-specific factors. These criteria are not considered comprehensive evaluation criteria; we consider all appropriate factors in evaluating formalized conservation efforts. The specific circumstances will also determine the amount of information necessary to satisfy these criteria.

To consider that a formalized conservation effort contributes to forming a basis for not listing a species, or listing a species as threatened rather than endangered, we must find that the conservation effort is sufficiently certain to be (1) implemented, and (2) effective, so as to have contributed to the elimination or adequate reduction of one or more threats to the species identified through the section 4(a)(1) analysis. The elimination or adequate reduction of section 4(a)(1) threats may lead to a determination that the species does not meet the definition of threatened or endangered, or is threatened rather than endangered. An agreement or plan may contain numerous conservation efforts, not all of which are sufficiently certain to be implemented and effective. Those conservation efforts that are not sufficiently certain to be implemented and effective cannot contribute to a determination that listing is unnecessary, or a determination to list as threatened rather than endangered. Regardless of the adoption of a conservation agreement or plan, however, if the best available scientific and commercial data indicate that the species meets the definition of an ''endangered species'' or a ''threatened species'' on the day of the listing decision, then we must proceed with appropriate rulemaking activity under section 4 of the Act. Further, it is important to note that a conservation plan is not required to have absolute certainty of implementation and effectiveness in order to contribute to a listing determination. Rather, we need to be certain that the conservation efforts will be implemented and effective such that the threats to the species are reduced or eliminated.

Using the criteria in PECE (68 FR 15100, March 28, 2003), we evaluated the certainty of implementation (for those measures not already implemented) and effectiveness of conservation measures in the 2017 Fort A.P. Hill INRMP pertaining to the Kenk's amphipod. We determined that the measures will be effective at eliminating or reducing threats to the species because they protect currently occupied, and any future occupied, seeps and their catchment areas from removal of forest canopy and the effects of poor water quality, erosion, and sedimentation, by instituting on-the-ground protections to better manage and regulate disturbance in the species' occupied habitat. For example, two of the sites are in an area where timber harvest and prescribed burns were scheduled to occur within the next 5 years, but will not be subjected to those management actions, pending any currently unknown change in mission requirements, due to the expanded buffer areas implemented around the Kenk's amphipod sites (see below).

We have a high degree of certainty that the measures will be implemented because Fort A.P. Hill has a track record of being good environmental stewards for the past 76 years since the base was established, and, more specifically, a track record of implementing conservation measures for federally listed species and species of concern since 1997 through their INRMPs. For example, Fort A.P. Hill has effectively implemented conservation measures specified in their INRMP for the Rappahannock spring amphipod (*Stygobromus foliatus*), a Department of Defense species at risk, including surveying its population and implementing avoidance buffers from ground-disturbing activities on the installation. In addition, during the spring of 2017, Fort A.P. Hill allowed access to its facility for amphipod surveys in potential suitable habitat.

New conservation measures are prescribed by the 2017 INRMP for the Kenk's amphipod and are already being implemented, including expanded buffer areas. The 2017 INRMP has sufficient monitoring and reporting requirements to ensure that the conservation measures we deem necessary are implemented as planned, and are effective at removing threats to the Kenk's amphipod and its habitat. As specified above, the INRMP may be modified to reflect changes in mission requirements. Despite this provision, we believe that the site conditions at Fort A.P. Hill will continue to be adequate to conserve the Kenk's amphipod, and Fort A.P. Hill will discuss with the Service any changes in mission requirements that would affect the Kenk's amphipod and its habitat.

Collaboration between the Service, Fort A.P. Hill, and Virginia Department of Game & Inland Fisheries previously occurred during development of the INRMP and continues to occur via discussions pertaining to

implementation throughout the year that are documented through electronic mail correspondence and telephone calls (Hoskin 2017, pers. comm.). This ongoing coordination and collaboration ensures that the conservation measures identified in the INRMP for all Federal and State listed species and species of concern are implemented. Based on Fort A.P. Hill's implementation of previous conservation efforts as specified in its INRMP, we have a high level of certainty that the conservation measures in the 2017 INRMP will be implemented and effective, and thus they can be considered as part of the basis for our final listing determination for the Kenk's amphipod. Our detailed PECE analysis is available for review at *http://www.regulations.gov* and *https://www.fws.gov/chesapeakebay/*.

Summary of Biological Status and Threats

Please refer to the proposed listing rule for the Kenk's amphipod (81 FR 67270; September 30, 2016) for a detailed description of the factors affecting the species, which are summarized and updated as appropriate below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Water Quality/Quantity Degradation Due to Chronic Pollution of Urban/Suburban Runoff

Habitat modification, in the form of degraded water quality and quantity, is one of the primary drivers of Kenk's amphipod viability. While the species' specific tolerances to parameters affecting water quality and quantity is not yet known, we do know that the Kenk's amphipod is at increased risk to parameters that negatively affect water quality and quantity because these freshwater amphipods spend their entire life cycle in water and are, therefore, continually exposed to changes in the aquatic habitat. Water quality degradation of ground water at spring sites located in the Washington metropolitan area has been previously cited as a top concern in several studies and reports (Feller 1997, pp. 12–13; Culver and Sereg 2004, p. 13; Feller 2005, p. 9; Hutchins and Culver 2008, p. 6; Kavanaugh 2009, p. 60; Culver *et al.* 2012, p. 37; Culver and Pipan 2014, p. 219).

The amount of forested buffer surrounding the seep influences the species' vulnerability and exposure to negative effects, and the smaller the buffer, the greater the risk of exposure. Buffer distance is important because the buffer helps filter sediment and other contaminants from the surface water entering the catchment areas and, therefore, the ground water that supports the Kenk's amphipod. The Washington metropolitan area amphipod sites have narrow riparian buffers (94 ft to 1,000 ft) (29 m to 305 m) separating them from the surrounding urban landscape. This urban land is characterized by impervious surface cover, which includes paved roads, sidewalks, parking lots, and buildings (Sexton *et al.* 2013, p. 42).

An impervious cover analysis was conducted by the Service within the watersheds occupied by the Kenk's amphipod.

We calculated the overall average value (percentage) for each watershed identified. We also identified three categories of impervious cover: (1) 0 percent impervious cover, (2) 1 to 15 percent impervious cover, and (3) greater than (>) 15 percent impervious cover. For each watershed, we then calculated the percentage of area that fell into each of these three categories. These percentages are presented in Table 2.

TABLE 2—IMPERVIOUS COVER ESTIMATES

Amphipod species (total number of sites)	Watershed	Number of amphipod sites	Categories of impervious cover (IC) percentage			Average impervious cover (IC) percentage
			0% IC	1–15% IC	>15% IC	
Stygobromus kenki (12)	Lower Rock Creek	5	17	24	59	83
	Northwest Branch	1	28	27	45	72
	Mount Creek	1	92	6	2	8
	Mill Creek	3	93	5	2	7

* Vorhees Nature Preserve was not evaluated.

The four watersheds within the Kenk's amphipod's range have overall impervious cover estimates ranging from approximately 7 percent (Mill Creek in Virginia) to 83 percent (Lower Rock Creek in the District of Columbia and Montgomery County, MD). Although the data for this level of the impervious cover analysis were derived using the finest scale hydrologic units available in the National Land Cover dataset, they do not reference the exact location of the Kenk's amphipod spring sites in relation to the location of impervious cover within the watersheds because the spring sites and their catchment areas are at a smaller scale. Additionally, because the data are from 2011, there could be more impervious cover present than indicated in our analysis. However, by looking at aerial photographs from 1988 and 2014 of the areas surrounding the spring sites in the Washington metropolitan area, there has been little change in the amount of development; therefore, we determined that the estimates of impervious cover derived from the 2011 dataset are sufficiently accurate for our analysis.

To provide a general indication of how much impervious cover may be influencing surface water quality at individual sites, we created maps with the individual sites included within the impervious cover data layers (see Supplemental Document—*Maps of Impervious cover in relation to spring sites in the Washington metropolitan areas* and *Impervious cover in relation to spring sites in Virginia*).

Urban impervious surfaces can result in increased surface water flow after storm events due to decreased opportunity for immediate or proximal infiltration. The surface flow waters have higher temperatures, higher sediment loads, and higher levels of heavy metals (zinc, cadmium), nitrogen, phosphorus, and fecal coliform bacteria (Walsh *et al.* 2005, pp. 706–723). In addition to affecting water quality, urban impervious surfaces can affect water quantity; decreased infiltration can result in depletion of ground water reserves and ultimately cause springs to dry up over time (Frazer 2005, p. 3).

When the average impervious cover is between 10 and 15 percent within a watershed, sharp declines in aquatic habitat quality and aquatic insect

diversity are likely to occur, while the number of pollution-tolerant species increase (Schueler 1994, pp. 100–102; Boward *et al.* 1999, p. 45; Center for Watershed Protection 2003, pp. 101–102 (synthesis of 30 studies)). More recently, declines of 110 of 238 macroinvertebrate taxa were found in streams receiving runoff water from areas that contained between 0.5 to 2 percent of impervious cover (King *et al.* 2011, pp. 1659–1675). These results were consistent among the three physiographic regions evaluated (Mountain, Piedmont, and Coastal Plain); the Piedmont region includes the Washington metropolitan area amphipod sites. Further, higher gradient, smaller catchments such as those supporting sites occupied by the Kenk's amphipod required less impervious cover than lower gradient, larger catchments to elicit a macroinvertebrate community response (*i.e.,* the macroinvertebrate taxa from steeper sloped, smaller catchment areas showed a decline in response to relatively small amounts of impervious cover) (King *et al.* 2011, pp. 1659–1676). This finding is relevant, given that the results of our impervious cover analysis indicate that Kenk's amphipod sites are located within areas containing 7 to 83 percent impervious cover (see table 2).

The hypotelminorheic zone, the main habitat required by the Kenk's amphipod, may be more vulnerable to the effects of urban runoff than streams with respect to pollutants, erosion, and sedimentation because of the small size and shallow nature of the habitat. In addition, the aforementioned narrow buffer zones around the hypotelminorheic sites increase the habitat's and species' exposure to urban runoff.

Poor water quality parameters have been documented by the USGS through chemical analyses of ground water, surface water, and sediments in the Rock Creek watershed (Anderson *et al.,* 2002, pp. 1–99; Miller *et al.* 2006, pp. 1–48; Koterba *et al.* 2010, pp. 1–102; Phelan and Miller 2010, pp. 1–80). For example, five pesticides (carbaryl, chlorpyrifos, diazinon, dieldrin, and malathion) were detected in Rock Creek Park water samples at concentrations that exceed aquatic life water quality criteria (Anderson *et al.* 2002, p. 44). Furthermore, Rock Creek sediments contained polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), organochlorine pesticides, and toxic metals at concentrations that approached and exceeded guidelines for the protection of aquatic life (Miller *et al.* 2006, p. 21). In a 2008 study at five stream locations in Rock Creek Park, pharmaceuticals, pesticides, fragrances, flame retardants, detergents, and sterols were detected and attributed to low-level sources of wastewater entering the streams (Phelan and Miller 2010, pp. 37, 40–41).

In the Washington metropolitan area, water quality degradation from urban runoff is the greatest concern for the Kenk's amphipod at the Sherrill Drive Spring location (Culver and Sereg 2004, p. 69). Sherrill Drive Spring is close (approximately 115 ft (35 m)) to the edge of Rock Creek Park where there is an abrupt change from forested habitat to an urban landscape along 16th Street Northwest, which parallels the park boundary. A significant amount of impervious cover routes runoff into the catchment area surrounding the Sherrill Drive Spring.

While there have been no laboratory studies conducted to evaluate the effects and tolerance of the Kenk's amphipod or *Stygobromus tenuis* to chemical, nutrient, pesticide, or metal pollution, we know from published studies that amphipods may be one of the most vulnerable groups of organisms to chemical pollution due to their high sensitivity to toxicants and contaminant accumulation (Borgmann *et al.* 1989, p. 756; Brumec-Turc 1989, p. 40). Sediment samples surrounding the springs were collected in September 2001 at East Spring and Sherrill Drive Spring to analyze metal and organic contaminants.

Toxic metals were found in the sediment samples. Values were similar for the two sites, although East Spring had the highest values for all toxic metals, with the exception of zinc (Culver and Sereg 2004, p. 65). However, because it was the springs' sediments instead of water samples that were analyzed, it is difficult to know whether the value of the metals measured in the sediments exceed aquatic life standards in water or any published values for freshwater amphipod species. Furthermore, water samples taken from the springs in Rock Creek Park and at Burnt Mill Spring #6 in June 2016 did not detect toxic metals (Pinkney 2017b, pers. comm.). Sources of trace metals in an urban environment may include vehicles, streets, parking lots, snowpacks, and rooftops (Center for Watershed Protection 2003, p. 73). However, although the Washington metropolitan area spring sites are exposed to these sources, there is no quantitative evidence that toxic metals are affecting the springs or the Kenk's amphipod.

Water samples collected from 2000 to 2003 found nitrate levels as high as 30.8 milligrams per liter (mg/L) at Sherrill Drive Spring (Culver and Sereg 2004, p. 109). In 2016, nitrate concentrations at Sherrill Drive Spring were 3.9 mg/L and 4.2 mg/L at Burnt Mill Spring #6 (Pinkney 2017, pers. comm.). Statistical analysis of Maryland Biological Stream Survey (MBSS) data indicated that detrimental effects were present in fish and benthic communities at critical nitrate-N threshold values of 0.83 mg/L and 0.86 mg/L, respectively (Morgan *et al.* 2007, pp. 160–161). These threshold values are significantly lower than the values reported at Sherrill Drive Spring and Burnt Mills Spring #6.

We do not know how typical the Sherrill Drive Spring or Burnt Mill Spring #6 nitrate concentrations are and if chronic exposure is occurring, but we know that *Stygobromus* specimens have not been detected at Sherrill Drive Spring since 2001 or at Burnt Mill Spring #6 since 2005 (see table 1). We also do not know the potential source of the nitrate since it could come from runoff containing fertilizers or animal waste or from sanitary sewer leaks. However, a sanitary sewer line runs adjacent to the Sherrill Drive Spring, and this sewer line has leaked in the past (Feller 1997, p. 37; Yeaman, 2014, pers. comm.).

Other high levels of nutrients were also evident in the June 2016 sampling conducted by the Service's Chesapeake Bay Field Office (Pinkney 2017b, pers. comm.). The EPA (2000) ecoregional proposed criterion for stream total nitrogen of 0.69 mg/L was exceeded at the following seepage spring locations: Kennedy Street Spring (1.9 mg/L), Sherrill Drive Spring (6.5 mg/L), East Spring (9.7 mg/L), Holsinger Spring (20.9 mg/L), and Burnt Mill Spring #6 (24.2 mg/L). The EPA stream total phosphorus criterion of 0.036 mg/L was exceeded at all five seepage springs with a maximum concentration of 1.3 mg/L at Kennedy Street Spring. The MBSS thresholds were 1.3 mg/L total nitrogen and 0.043 mg/L total phosphorus for benthic communities (no thresholds were determined for fish communities) (Morgan *et al.* 2007, pp. 160–161).

Chloride levels as high as 227 mg/L were detected at Sherrill Drive Spring. The EPA chronic ambient water quality criterion for chloride is 230 mg/L (EPA 2016, entire). Although we do not know the exact source of the elevated chloride levels at Sherrill Drive Spring, one potential source could be road salt. The Washington metropolitan area receives, on average based on 69 years of data taken at Washington National Airport, approximately 19.5 inches of snow annually (Southeast Regional Climate Center 2017, entire; Current Results 2017, entire). The District of Columbia Department of Public Works uses road

salt and other salt products to pre- and post-treat road surfaces before and after ice and snowfall events (District of Columbia Department of Public Works 2017, entire). However, the NPS has discontinued the use of road salts at some locations within Rock Creek Park (Bartolomeo 2017, pers. comm.). The widespread use of salt to deice roadways has led to regionally elevated chloride concentrations equivalent to 25 percent of the chloride concentration in seawater during winter. The concentrations can remain high throughout the summer even in less urbanized watersheds due to long-term (*e.g.,* decades) accumulation of chloride in ground water (Kaushal *et al.* 2005, pp. 13518–13519). This phenomenon was documented by the Service's June 2016 detection of a chloride concentration of 227 mg/L at Sherrill Drive Spring (Pinkney 2017a, pers. comm.). Analyses of MBSS data on fish and benthic communities yielded critical chloride values of 17 mg/L for fish and 50 mg/L, respectively, as thresholds above which there would be detrimental effects on biotic communities (Morgan *et al.* 2007; pp. 160–161). Thus, the concentrations measured in June 2016 (Pinkney 2017a, pers. comm.) at Kennedy Street Spring (56.3 mg/L), Holsinger Spring (70.7 mg/L), Burnt Mill Spring #6 (115 mg/L), and Sherrill Drive Spring (237 mg/L) all exceed thresholds for benthic communities. Furthermore, chloride concentrations in ground water may move slower (*e.g.,* dilute slower) than in surface waters and thus the effects from winter road salt application may be more persistent in the surrounding environment (Findlay and Kelly 2011, p. 66).

At Coquelin Run Spring, ground water pollution from yard chemicals and road runoff (*e.g.,* road salts, oil) could be a concern for the Kenk's amphipod's long-term viability. The USGS research on water quality degradation in other urban areas indicates that chemicals enter waterways and ground water primarily through runoff from rain events, and these chemicals have commonly been detected in streams and shallow ground water (USGS 1998, entire; USGS 1999a, pp. 1–3; USGS 1999b, p. 1; USGS 2001, p. 2). Although no water samples have been taken at the Coquelin Run Spring site, it is separated from backyards in this neighborhood by a narrow, wooded riparian strip (less than 100 ft) (30 m) that slopes steeply down to the site. Therefore, the Coquelin Run Spring may be at increased risk of exposure to chemical pollutants from the surrounding urban development.

The other four Washington metropolitan area sites (Burnt Mill Spring #6, Holsinger Spring, East Spring, and Kennedy Spring) have wider buffers than Sherrill Drive Spring and Coquelin Run Spring, with buffer distances ranging from approximately 272 ft (83 m) to 1,000 ft (305 m). East Spring and Kennedy Spring had much lower conductivity and nitrate levels than Sherrill Drive Spring in the 2000, 2001, and 2003 sampling (Culver and Sereg 2004, pp. 55–58), but were still above criteria suggested by Morgan *et al.* (2007, p. 161). Surveys conducted in 2015 and 2016 did not re-confirm the Kenk's amphipod at any of these sites but consistently found *Stygobromus tenuis* at all the sites in higher numbers (*e.g.,* greater than 40 observed at Burnt Mill Spring #6 during 1 sampling event). Urban runoff can decrease biotic richness and favor more pollution-tolerant species in urban streams (Center for Watershed Protection 2003, pp. 101–102). If *S. tenuis* has a higher tolerance than the Kenk's amphipod to poor water quality parameters, the change in species' composition discussed in the proposed rule's (81 FR 67270; September 30, 2016) *Relative Abundance* section and Factor E—*Changes in Species Composition* could indicate that urban runoff is negatively affecting the Kenk's amphipod populations at these spring sites.

The NPS manages the surrounding habitat at the four seepage spring sites supporting the Kenk's amphipod in Rock Creek Park. While the NPS uses its regulatory authority to manage water quality concerns for the species within Rock Creek Park, the agency has little influence over the protection of or effects to any seep recharge areas occurring outside park boundaries, and over maintenance or repair of city-owned infrastructure such as storm water and sewer systems located near the spring sites. See the proposed rule (81 FR 67270; September 30, 2016) for a list of laws and policies influencing NPS management.

In Virginia, poor water quality is not likely affecting the species at the Fort A.P. Hill and Voorhees Nature Park because the sites are located in watersheds that are primarily forested with little impervious surface (see table 2).

Summary of Water Quality—In total, poor water quality is believed to be a contributing stressor at all six of the Washington metropolitan area sites (*i.e.,* 46 percent of the total known sites). Water quality in this area is expected to worsen due to significant runoff events from anticipated increases in both winter and spring precipitation and the frequency of high-intensity storms. (See Factor A—*Excessive Storm Water Flows* and Factor E—*Effects of Climate Change* sections for more details.) However, we find that poor water quality is not impacting the Virginia spring sites because the sites are located in forested areas with low levels of impervious cover, and we do not anticipate those conditions to change into the future. In addition, the measures in Fort A.P Hill's INRMP and the location of one site on conservation land provides protections to the species.

Excessive Storm Water Flows

Runoff from impervious surfaces after heavy rain events can result in flooding (Frazer 2005, p. 4; NBC News 2016, entire). Flash flooding can also result in erosion and sedimentation (Center for Watershed Protection 2003, pp. 30–33), which, if it occurs in the catchment area, can subsequently degrade a spring site's value as habitat for the Kenk's amphipod.

In the Washington metropolitan area, excessive storm water flows are causing significant habitat degradation at two sites—Sherrill Drive Spring and Coquelin Run Spring. A washout at Sherrill Drive Spring from 16th Street was observed in 2016 making it difficult to find a seep to survey (Feller 2016f, pers. comm.). Coquelin Run Spring is severely degraded by runoff from the surrounding Chevy Chase Lake Subdivision, where severe erosion was first observed at this site in 2006 (Feller 2016h, pers. comm.). Subsequent surveys of the site found evidence of plastic underground pipe and sheeting, which may have been an attempt to address water flow and erosion at the site, in close proximity to the original seep and further erosion of the site (Feller 2016a, pers. comm.; Feller 2016e, pers. comm.). A small flow was observed in May 2016 but was located several feet above the original seep documented in 2006. It is unknown what affect the pipe or plastic may have on the long-term hydrology of the site.

Erosion from storm water flows has also been observed at the other three springs in Rock Creek Park, but not to the extent that it has been observed at Sherrill Drive and Coquelin Run Springs. It is unknown how much chronic or acute erosion and sedimentation causes a site to become unsuitable for the Kenk's amphipod; however, Culver and Sereg (2004, p. 69) found that sediment transported by storm runoff results in the degradation of ground water animals' habitat by clogging the interstices of gravels in the

spring seep, thereby preventing the species from using those interstitial spaces for shelter. It is uncertain to what extent the Kenk's amphipod uses those interstitial spaces, but if they do, then it is plausible that this type of sedimentation would cause the habitat to become unsuitable for the species.

At the Virginia sites, Mill Creek #2 experiences sheet flow into the seep area off of a lateral slope during rainfall events due to the degree of slopes and close proximity to a stormwater culvert outlet (Applegate 2016, pers. comm.). However, erosion and sediment control repairs to the culvert and the surface of the associated unimproved trail conducted prior to the proposed rule has dramatically improved current conditions. Consequently, sheetflow is not considered a threat to the conservation of the Kenk's amphipod at this location (Applegate 2017, pers. comm.). Sheet flow is not considered to be a problem at Voorhees Nature Preserve (Hobson 2017a, pers. comm.).

Summary of Excessive Storm Water Flows—Excessive storm water flows are a contributing stressor at 38 percent (5 of 13) of the species' sites (Sherrill Drive Spring, Coquelin Run Spring, East Spring, Kennedy Street Spring, and Holsinger Spring).

Sewer Line Breaks and Spills

The same riparian areas that contain the habitats of the Kenk's amphipod are among the principal areas where sewer lines are located in the Washington metropolitan area (Feller 2005, p. 2). Most of these sewer lines are old (most installed between 1900 and 1930 in the District of Columbia and between 1941 and 1971 in Montgomery County, MD) and subject to periodic breakage and leakage (Shaver 2011, entire; Kiely 2013, entire). While there have been no laboratory or field studies evaluating the effect of sewage leaks or spills on the Kenk's amphipod or the *Stygobromus tenuis,* adverse effects of sewage contamination on amphipods and other invertebrates have been documented (Simon and Buikema 1997, entire; de laOssa-Carretero *et al.* 2012, p. 137).

Releases of large volumes of sewage (up to 2 million gallons (gal)) from sanitary sewer leaks have occurred in the District of Columbia and Montgomery County, MD. Coquelin Run Spring, Burnt Mill Spring #6, and Sherrill Drive Spring are most vulnerable to sewage spills because they are located downhill from several sewer lines (see table 2 in the proposed rule (81 FR 67270; September 30, 2016) for details). The Washington Suburban Sanitary Commission (WSSC) has documented numerous large (more than 1,000 gallons) and small (more than 100 gallons) leaks in both the Rock Creek and Northwest Brach drainages (WSSC 2015). The District of Columbia does not have such detailed records, but half the District of Columbia's 1,800 mi (2,896 km) of sewer lines are at least 84 years old and faulty pipes result in two dozen sewer spills every year (Olivio 2015). The frequency of spills is likely to increase in the future as the sewer lines continue to age.

At the Virginia sites, we have no information indicating sewer pipelines may affect the species.

Summary of Sewer Line Spills—In total, sewer line breaks and spills are a potential concern at 23 percent (3 of 13) of the species' sites.

Water Pipe Breaks

Bursting of large-diameter water pipes can cause significant erosion of surrounding areas as a result of the large volume of fast-moving water that exits the pipe at the break point. Bursting water pipes and the resulting erosion has been documented within the Washington metropolitan area, including areas near but not directly at a specific Kenk's amphipod seep site (Dudley *et al.* 2013, entire). The exposure risk of bursting water pipes at locations that could affect Kenk's amphipod sites is increasing given the age of the water pipe infrastructure (see table 2 in the proposed rule (81 FR 67270; September 30, 2016) for more details).

At the Virginia sites, we have no information indicating water pipeline breaks may affect the species.

Summary of Water Pipe Breaks—In total, large water pipeline breaks have a potential to occur at 8 percent (1 of 13) of the species' sites (Sherrill Drive Spring), while smaller water pipeline breaks could occur at 23 percent (3 of 13) of the sites (Sherrill Drive Spring, Coquelin Run Spring, and Burnt Mills #6 Spring).

Other Habitat Considerations

The Kenk's amphipod is likely susceptible to changes to the forest canopy and understory; this theory is supported by the fact that they can be found in leaf litter. The more common species *Stygobromus tenuis* has been found to actively exit the hypotelminorheic under appropriate conditions, presumably to forage (Kavanaugh 2009, p. 3), and they are found only in forested areas (Culver 2016, pers. comm.).

In the Washington metropolitan area, there have been no land-disturbance activities such as forest management or vegetation/habitat management activities conducted at Rock Creek Park or at the Montgomery County park in the vicinity of the seeps. At Rock Creek Park, the NPS has taken steps to prevent designated trails from being built in areas that could affect the Kenk's amphipod, and there are no trails in close vicinity to the seep found at the county park. At the privately owned site, an underground pipe previously installed on the hillside where the seep is located was observed in 2016, and, despite the steep topography, there is the potential for foot traffic in the seepage area by the landowners. The Service is unaware of any tree removal ever occurring at this site.

In general, stressors to the Kenk's amphipod habitat at the Virginia sites are less significant than those in the Washington metropolitan area because land use is primarily agriculture and forest with little impervious surface. See the description of Fort A.P. Hill under the Ongoing and Future Conservation Measures section above. With the possible exception of the effects of climate change and the potential effects of small population dynamics (see Factor E below), we are unaware of any stressors at Voorhees Nature Preserve (Hobson 2017a, pers. comm.). The preserve is located 8.5 mi (13.7 km) east across the Rappahannock River from Fort A.P. Hill in Westmoreland County, Virginia. The 729-acre (295-hectare) parcel has been owned by The Nature Conservancy (TNC) since 1994. The goal of the preserve is to protect the mature coastal plain forest and freshwater tidal marsh (Truslow 2017a, pers. comm.).

As of July 2017, human activity at the preserve is limited to maintenance of approximately 3 mi (4.8 km) of hiking trails, white-tailed deer management through a hunt lease with a local hunt club, and annual monitoring to ensure the protection goals of the property are being met. There is light recreational use from the 3 mi (4.8 km) of hiking trails located on the property. The trails are open only for foot travel (approximately several hundred visitors a year based on trail logs); no ATVs or bikes are allowed on the trails (Truslow 2017b, pers. comm.). Dogs are also not allowed at the preserve (TNC 2017, entire).

The seep where the Kenk's amphipod was found is not impacted by the trail because it is located approximately 30 to 40 ft (9.1 to 12.2 m) down slope of the trail, at the head of a ravine, and it is surrounded by dense vegetation, which makes access to the site difficult (Hobson 2017a, pers. comm.). There is also no visible erosion from the trail (C. Hobson 2017a, pers. comm.).

The TNC developed a site-management plan upon assuming ownership. Timber harvesting will not occur where there is mature forest, and uplands will be kept in a forested condition to protect the property's marsh from sedimentation runoff. In addition, TNC will not use pesticides (*e.g.,* dimilin) to control future gypsy moth infestations (TNC 1994).

In terms of the property's protection status, TNC preserves are considered to be permanently protected. The deed does not contain restrictions on TNC selling or transferring the property; however, TNC policy would require that the property be transferred to an entity that would manage for similar conservation goals (*e.g.,* a State natural resource agency or Federal agency), or that it be restricted by a conservation easement that would ensure permanent protection of the property (Truslow 2017a, pers. comm.).

The preserve is surrounded primarily by forest, and there is Service-owned National Wildlife Refuge land and State-owned land west of the site. A soil enhancement facility was proposed in 2014 at a parcel approximately 1 mile (1.6 km) northeast of the seep. The purpose of the facility would be to compost biosolids from sewage and sell the compost as fertilizer. If the site was approved and constructed, it would not impact the Kenk's amphipod because the seep is at a higher elevation and in a different surface catchment area than the proposed soil enhancement facility.

Summary of Factor A—Habitat modification, in the form of degraded water quality and quantity, is one of the primary drivers affecting Kenk's amphipod viability at the Washington metropolitan area sites, despite ongoing conservation measures. Reductions in water quality continue to occur at those sites primarily as a result of urbanization, which increases the amount of impervious cover in the watersheds surrounding six of the Kenk's amphipod sites. Impervious cover increases storm water flow velocities, decreases ground water filtration, and increases erosion and sedimentation. Impervious cover can also increase the transport of contaminants and nutrients common in urban environments, such as metals (zinc, cadmium), nitrogen, phosphorus, and fecal coliform bacteria. The Washington metropolitan area sites have narrow riparian buffers separating them from the surrounding development, increasing the sites' exposure to poor water quality from runoff. While poor water quality has been documented at Sherrill Drive Spring and is likely affecting all six sites in the Washington metropolitan area, the seven Virginia sites are not thought to be affected by poor water quality because of the large forested buffers on Fort A.P. Hill and Voorhees Nature Preserve.

Excessive storm water runoff from heavy rain events can result in flooding, which can cause erosion and sedimentation. Habitat degradation due to excessive storm water flows is having effects at two sites—Sherrill Drive Spring and Coquelin Run Spring—but has also been observed at the other four springs in Rock Creek Park, and may increase in the future. At the Virginia sites, we have no information indicating excessive storm water flows affect the species.

Sewer and water line breaks and leaks are a concern at the Washington metropolitan area sites because most of them are located in the same riparian areas that contain the habitats of the Kenk's amphipod. While leaks and breaks of these pipelines have not yet been known to directly affect the species or its habitat, the pipeline systems are subjected to chronic leaks and breaks, the frequency of which is likely to increase given the age of the infrastructure, and thus the exposure risk of the species to this stressor will continue to increase. Coquelin Run Spring, Burnt Mill Spring #6, and Sherrill Drive Spring are most vulnerable to sewage spills and water pipe breaks due to the pipe's proximity to each site and the age of the pipes. At the Virginia sites, we have no information indicating sewer or water pipeline breaks will affect the species.

Stressors to Kenk's amphipod habitat are significantly less in scope and severity at Fort A.P. Hill and Voorhees Nature Preserve than at the Washington metropolitan area habitats, due to the location of the sites, the current and foreseeable mission of the managing entities, and the conservation measures described in the INRMP and TNC Management Plan. The risk is low that any disturbance to the surface habitat on those properties would result in adverse effects to the species. We acknowledge that the Washington metropolitan sites face a number of stressors that will continue into the future. Of the six Washington sites, only one site has a recent record of Kenk's amphipod. We cannot confirm without additional consecutive negative survey results, but it is possible that this species is functionally extinct in the Washington metropolitan area given the stressors it faces and the lack of specimens found in recent survey results. Conversely, the seven Virginia sites do not face the same stressors as the Washington metropolitan area sites. Habitat quality at the Virginia sites is good and the sites all have some form of protection, either from the measures in the Fort A.P. Hill INRMP or the TNC nature preserve's site-management plan.

TABLE 3—RELATIVE VULNERABILITY OF KENK'S AMPHIPOD SEEP HABITAT SITES

Site name	Location	Current seep status	Current biological status of the Kenk's amphipod
Sherrill Drive Spring	Rock Creek Park, Washington, DC.	Approximately 50' to road, documented decrease in water quality (chemical and sedimentation), within 10' of 1924 sewer pipe and 130' of 1955 30'' water pipe.	Extirpated? Not found in recent surveys. No other *Stygobromus* present. Last detected 2001 (8 surveys since and none found). Niemiller *et al.* (2017) eDNA study also supports extirpation of all *Stygobromus* here.
East Spring	Rock Creek Park, Washington, DC.	Approximately 300–500' buffer of protected forest, within 560' of 6–8'' 1921 water pipe.	Unknown. Not found in recent surveys but other *Stygobromus* present. Last detected 2001 (7 surveys in 2015–2016 and none found).
Kennedy Street Spring	Rock Creek Park, Washington, DC.	Approximately 500' buffer of protected forest, within 860' of 6–8'' 1911 water pipe.	Unknown. Not found in recent surveys but other *Stygobromus* present. Last detected 2001 (5 surveys since and none found).

TABLE 3—RELATIVE VULNERABILITY OF KENK'S AMPHIPOD SEEP HABITAT SITES—Continued

Site name	Location	Current seep status	Current biological status of the Kenk's amphipod
Holsinger Spring	Rock Creek Park, Washington, DC.	Approximately 700–1,000' buffer of protected forest.	Historical? Not documented since 1967. One survey in 2003 and 3 surveys in 2015 and none found; other *Stygobromus* species present.
Burnt Mill Spring #6	Northwest Branch Park, Montgomery County, MD.	In county park protected from further development, within 186' of unknown age sewer pipe and 394' of 6–8'' 1959 water pipe.	Unknown. Not found in recent surveys but other *Stygobromus* species present. Last detected in 2005 (10 surveys since and none found).
Coquelin Run Spring ...	Private land, Montgomery County, MD.	Erosion problems are already apparent, site has been modified with a plastic pipe and plastic material, and riparian forest is very narrow. Within 220' of 1952 sewer pipe and 250' of 6–8'' 1954 water pipe.	Present in upslope portion of seep (1 individual found in 2016); lower section has some erosion and species absent in that section (3 surveys conducted in 2016 and none found). No other *Stygobromus* species were found in upper or lower portion of seep in 2016.
Fort A.P. Hill (6 seeps)	Department of Defense, Caroline County, VA.	Good habitat quality, sites unaffected by urbanization. Military exercises, forest management, and construction activities are at low risk to affect surface habitat due to the revised INRMP.	Present and recently discovered. One individual each found at Upper Mill 2, Mill 4, and Mount 2 in 2014 but not identified as the Kenk's amphipod until 2016; 4 individuals found at Mill 5 in 2014. In 2017, there were 6 individuals found at Upper Mill 2, 1 individual at Upper Mill 4, and 4 individuals at Mount 2. Two new sites were found in 2017: Mill Creek 56 (16 individuals) and Mill Creek 59 (8 individuals found).
Voorhees Nature Preserve (1 seep).	Westmoreland County, VA.	Good habitat quality, owned by TNC. Permanently protected as a nature preserve.	Recently discovered. One individual found in 2017.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In the September 30, 2016, proposed rule (81 FR 67270), we found no information indicating that overutilization was a factor affecting the Kenk's amphipod. No new information from peer review or public comments indicates that overutilization is a concern for the species.

Factor C. Disease or Predation

In the September 30, 2016, proposed rule (81 FR 67270), we found no information indicating that disease or predation was affecting the Kenk's amphipod. No new information from peer review or public comments indicates that disease or predation is a concern for the species.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The following existing regulatory mechanisms were specifically considered and discussed as they relate to the stressors, under the applicable Factors, affecting the Kenk's amphipod: the Clean Water Act's (CWA) National Pollutant Discharge Elimination System, Rock Creek Park Authorization Act of 1890, and National Park Service Organic Act of 1916 (Factor A; summarized above in this final determination, but discussed in full in the proposed rule (81 FR 67270; September 30, 2016) and Nongame and Endangered Species Conservation Act (Factor B).

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small Population Dynamics

The observed small size of each of the 13 Kenk's amphipod populations may make each one vulnerable to natural environmental stochasticity and human-caused habitat disturbance, including relatively minor impacts in their spring recharge areas. However, there is significant uncertainty regarding the extent to which the number of Kenk's amphipods observed at the seep surface accurately reflects the actual population at each site given the species' known ability to move between the surface and subsurface habitat. We are unaware of any reliable method to accurately estimate the actual population size of the Kenk's amphipod at each of its historical and current sites. In addition, the multiple sites (six in the Washington metropolitan area and seven in Virginia) provide some protection against stochastic and catastrophic events affecting all sites simultaneously (see the Cumulative Effects section below).

An eDNA (Niemiller *et al.* 2016, pp. 1–7) and a hydrogeology study (Staley 2016, pp. 1–46) were conducted in 2016. However, neither study resulted in any information that helped us better understand the Kenk's amphipod's genetics, distribution, or potential for dispersal (*e.g.,* metapopulation structure). Therefore, unless the populations are larger than we know or are hydrologically connected such that individuals can move between sites, we maintain that these small populations are vulnerable to the effects of small population dynamics.

Species that are restricted in range and population size are more likely to suffer loss of genetic diversity due to genetic drift, potentially increasing their susceptibility to inbreeding depression, and reducing the fitness of individuals (Soule 1980, pp. 157–158; Hunter 2002, pp. 162–163; Allendorf and Luikart 2007, pp. 117–146). Small population sizes and inhibited gene flow between populations may increase the likelihood of local extirpation (Gilpin and Soulé 1986, pp. 32–34). With the exceptions for the Fort A.P. Hill populations of Mill Creek #2 and Mill Creek #4, which are separated by only approximately 360 ft (110 m), and Mill Creek #56 and #59, which are approximately 2,640 ft (805 m) from the other two Mill Creek sites and 1,056 ft (322 m) apart from each other, all the other populations of the Kenk's amphipod are isolated from other existing populations and known habitats by long distances, inhospitable upland habitat, and terrain that create barriers to amphipod movement. The level of isolation and the restricted range seen in this species, based on our

current knowledge of known habitat, make natural repopulation of known habitats (*e.g.,* the District of Columbia sites and Burnt Mill Spring #6 where the species' presence has not been recently confirmed) virtually impossible without human intervention.

Effects of Climate Change

Climate change may result in changes in the amount and timing of precipitation, the frequency and intensity of storms, and air temperatures. All of these changes could affect the Kenk's amphipod and its habitat. The amount and timing of precipitation influence spring flow, which is an important feature of the habitat of this ground water species. Also, the frequency and intensity of storms affects the frequency, duration, and intensity of runoff events, and runoff transport of sediment and contaminants into catchment areas of Kenk's amphipod sites, especially in the Washington metropolitan area, where there is a substantial amount of impervious cover in close proximity to the habitat (see Factor A summarized above and in detail in the proposed rule (81 FR 67270; September 30, 2016)). Below we discuss the best available climate predictions for the areas supporting the Kenk's amphipod.

The 2014 National Climate Assessment (Melillo *et al.* 2014, entire) predicts increasing ambient temperatures, increasing winter and spring precipitation, increasing frequency of heavy downpours, and increasing summer and fall drought risk as higher temperatures lead to greater evaporation and earlier winter and spring snowmelt (Horton *et al.* 2014, p. 374 *In* Melillo *et al.* 2014). Without more specific information about how seeps are connected underground, as well as the ability of the amphipods to migrate within the soil column in response to drying from drought conditions, it is unclear to what degree the temporary drying of these habitats will affect the Kenk's amphipod (Carter 2016, pers. comm.). Alternatively, an increase in heavy downpours will likely result in increased runoff and resulting erosion of surface features at spring sites, based on previously documented events. The 2014 National Climate Assessment further indicates that overall warming in the Northeast, including Maryland and the District of Columbia, will be from 3 to 10 degrees Fahrenheit (°F) (1.7 to 5.6 degrees Celsius (°C)) by the 2080s (Horton *et al.* 2014, p. 374 *In* Melillo *et al.* 2014). The Southeast region, which includes Virginia, is projected to see a regional average temperature increase of 4 to 8 °F (2.2 to 4.4 °C) (Carter *et al.* 2014, p. 399 *In* Melillo *et al.* 2014).

Data specific to the District of Columbia from NOAA's National Climate Data Center (NOAA 2017, entire) shows that the average annual air temperature in the District of Columbia has already increased by approximately 2 °F (1.1°C) from 1960, the decade corresponding to the first Kenk's amphipod surveys, to 2016. This higher rate of change in the District of Columbia may be due to the urban heat island effect (Oke 1995, p. 187), which is an increase in ambient temperature due to heating of impervious surfaces. This activity also results in an increase in temperature of rainwater that falls on heat-absorbing roads and parking lots. A sudden thunderstorm striking a parking lot that has been sitting in hot sunshine can easily result in a 10 °F (5.6 °C) increase in the rainfall temperature. Menke *et al.* (2010, pp. 147–148) showed that these temporary increases in temperature of storm water can still result in a shift in the biotic community composition and even accelerate changes in species distributions. Based on the work of Menberg *et al.* (2014, entire), we expect these changes in air temperature to be reflected in the temperature of the shallow ground water at all sites within a few years, but at a lower magnitude.

Increased temperature is stressful to aquatic life through several mechanisms. First, at higher temperatures, the metabolic rate of invertebrates and fish is higher and more rapid ventilation is needed by the animal to obtain oxygen, which is less soluble (*i.e.,* less available) in warmer versus cooler water (Schiedek *et al.* 2007, p. 1846). Second, the rates that cold-blooded animals metabolize certain chemicals into more toxic forms increase at higher temperatures. This characteristic can either cause sublethal effects that inhibit the animal's ability to feed, breed, or escape from predators, or can be lethal due to increased toxicity at higher temperatures. For example, organophosphate insecticides are metabolically transformed into the more toxic oxon form. This oxon form is lethal to animals because it inhibits the enzyme acetylcholinesterase (Hooper *et al.* 2013, p. 36). Illustrating this toxicity, laboratory experiments exposed the *Gammarus pseudolimnaeus* amphipod to the organophosphates terbufos and trichlorofon (Howe *et al.* 1994, p. 58). In one set of experiments, terbufos was demonstrated to be seven times more toxic at 62 °F (17 °C) than at 45 °F (7 °C). And third, ammonia, derived from wastewater, fertilizers, and runoff from animal wastes, is more toxic to all aquatic life at higher temperatures because a greater fraction exists in the more toxic un-ionized form (EPA 2013, p. 7). Thus, the EPA aquatic life criteria are temperature (and pH) dependent with lower limits at higher temperatures for a given pH. It is important to note we do not have specific temperature tolerance information for the Kenk's amphipod; however, there are studies of other amphipod species that indicate these animals have a sensitivity to elevated temperatures, as exhibited by reduced or eliminated egg survival at water temperatures above 75 °F (24 °C) to 79 °F (26 °C) (Pockl and Humpesch 1990, pp. 445–449).

In summary, if current climate change predictions become reality, by the 2080s some increase in ground water temperatures will occur at sites occupied by the Kenk's amphipod, yet the magnitude and significance of these changes is difficult to predict.

Change in Species Composition

At most of the Washington metropolitan area sites supporting the Kenk's amphipod, numbers of the Potomac ground water amphipod, which is the most widely distributed and abundant *Stygobromus* species in the lower Potomac drainage (Kavanaugh 2009, p. 6), have increased as numbers of observed Kenk's amphipods have declined (Feller 2016b, pers. comm.; Feller 2016c, pers. comm.). The exact cause of this change is not known, but it may be an indication that some stressor has led to a competitive advantage for the Potomac ground water amphipod (Culver *et al.* 2012, p. 29). Other than at Coquelin Run Spring, there are no obvious physical changes at these sites indicating a cause for the decline. However, as described in Factor A, impaired water quality could favor a more common species over a rare species. Culver and Sereg (2004, pp. 72–73) indicated that there is a possibility that the Kenk's amphipod is a poor competitor with other *Stygobromus* species, which may be a factor promoting the Kenk's amphipod's natural rarity, and that in cave locations *Stygobromus* species strongly compete with each other. Only one site in the Washington metropolitan area was surveyed in 2017, Burnt Mills Spring #6. That site continues to have a large number of *S. tenuis* and no Kenk's amphipod (Feller 2016g, pers. comm.). The more common species *S. tenuis* and *S. foliatus* are found at the Virginia sites, but they are less abundant than what has been observed in the Washington metropolitan area sites (Hobson 2017b, pers. comm.). While the Kenk's amphipod may have always been

naturally rare, we conclude that the species may be getting rarer at the Washington metropolitan area sites due to the stressors discussed above.

Summary of Factor E—The believed small population size at all of the sites makes each one of them vulnerable to natural environmental stochasticity and human-caused habitat disturbance, including relatively minor impacts in their spring recharge areas. The believed small size and isolation of sites also make each population vulnerable to demographic stochasticity, including loss of genetic variability and adaptive capacity.

The best available climate data indicate that the areas supporting the Kenk's amphipod will see increasing ambient temperatures, increasing winter and spring precipitation, increasing frequency of heavy downpours, and increasing summer and fall drought risk as higher temperatures lead to greater evaporation and earlier winter and spring snowmelt. Droughts could result in drying up of spring sites, while the increase in heavy downpours could result in erosion and sedimentation of sites. Ambient air temperature has increased by 3 °F (1.7 °C) since 1960, and is expected to increase by 8 to 10 °F (4.4 to 5.6 °C) by the 2080s. If current climate change predictions become a reality, by the 2080s some increase in ground water temperatures will occur at sites occupied by the Kenk's amphipod, but the magnitude and significance of these changes is difficult to predict.

Cumulative Effects

Many of the factors previously discussed are cumulatively and synergistically affecting the Kenk's amphipod primarily in the Washington metropolitan area. For example, Kenk's amphipod habitat can be degraded by storm water runoff when there is not adequate forest buffer, which is likely to increase with more frequent and intense storms and precipitation levels in the future. Species with larger populations are naturally more resilient to the stressors affecting individuals or local occurrences, while smaller populations or individuals are more susceptible to demographic or stochastic events. Below we discuss the Kenk's amphipod's viability as expressed through the conservation biology principles of representation, redundancy, and resiliency, which illustrate how the cumulative and synergistic effects are affecting the species as a whole.

Redundancy—The species has some redundancy given its known historical distribution of 13 sites across 4 municipal jurisdictions and multiple streams. Currently, the species is known to be extant at one of the Washington metropolitan area sites and seven of the Virginia sites. We assume that the Sherrill Drive Spring site is extirpated. Although we cannot confirm without additional consecutive negative survey results, given the lack of recent positive surveys and the existing stressors at the five other Washington metropolitan area sites, it is possible that these sites are functionally extinct, which means that the population at each site is so reduced that the site population is no longer viable.

The isolation of the two Montgomery County, MD, populations from other Washington metropolitan area populations and their occurrence along different tributary streams make it unlikely that a single catastrophic adverse event (*e.g.,* a spill) will eliminate more than one occurrence at a time. In addition, the Virginia sites on Fort A.P. Hill occur in two stream areas, Mill Creek and Mount Creek, making it unlikely that a single military training event or other catastrophic event will eliminate more than one occurrence at a time. In addition, subsequent to the species' proposal for endangered status, it was found in the spring of 2017 approximately 8.5 mi (13.7 km) away and across the Rappahannock River from the known Fort A.P. Hill sites. This finding, together with the discovery of two new sites on Fort A.P. Hill, contributes to additional redundancy for the species.

Representation—Based on the information about historical changes to the landscape across the Washington metropolitan area, we conclude it is likely that the species' historical distribution was larger than the current distribution; therefore, the species may have previously experienced a loss in representation. Also, because we do not yet have sufficient information on the genetics of these populations, we cannot determine whether the species possesses a single genetic identity or has genetic variability across populations. However, the species is now known to occur within habitat supported by two different geological formations, the Wissahickon and Nanjemoy. While we conclude that the species' representation has likely been reduced from historical levels, it may not be as limited as we thought at the time of the proposed rule given our expanded understanding of suitable habitat and the three new locations found during the spring 2017 surveys on public land.

Resiliency—Based on the relatively small number of individuals found at the 13 known seeps, and the variability of stressors across the species' range, the resiliency of each of the Kenk's amphipod's populations may be low to moderate. The small size of each of the 13 habitat areas makes each population vulnerable to natural environmental stochasticity and human-caused habitat disturbance, including relatively minor effects in the spring recharge area. As a result of habitat fragmentation/isolation there is a lack of connectivity and genetic exchange between populations and, we assume, a lack of ability to recolonize extirpated sites. However, the larger number of Kenk's amphipods found at two of the newly discovered sites, together with the expectation that seven of the sites will be adequately protected from habitat quality stressors, leads us to believe that the resiliency of the Kenk's amphipod at a majority of its sites is higher than we thought at the time of the proposed listing rule.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for determining whether a species is an endangered species or threatened species and should be included on the Federal Lists of Endangered and Threatened Wildlife and Plants (listed). The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' The phrase ''significant portion of its range'' (SPR) is not defined by the Act, and, since the Service's policy interpreting the phrase was vacated by the court in *Center for Biological Diversity* v. *Jewell,* No. 14–cv–02506–RM (D. Ariz. Mar. 29, 2017), we currently do not have a binding interpretation that addresses: (1) The outcome of a determination that a species is either in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range; or (2) what qualifies a portion of a range as ''significant.'' We have examined the plain language of the Act and court decisions addressing the Service's application of the SPR phrase in various listing decisions, and for purposes of this rulemaking we are applying the following interpretation for the phrase ''significant portion of its range'' and its context in determining whether or not a species is an endangered species or a threatened species.

Two district court decisions have evaluated whether the outcomes of the Service's determinations that a species is in danger of extinction or likely to

become so in the foreseeable future in a significant portion of its range were reasonable. *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010) (appeal dismissed as moot because of public law vacating the listing, 2012 U.S. App. LEXIS 26769 (9th Cir. Nov. 7, 2012)); *WildEarth Guardians* v. *Salazar,* No. 09–00574–PHX–FJM, 2010 U.S. Dist. LEXIS 105253 (D. Ariz. Sept. 30, 2010). Both courts found that, once the Service determines that a ''species''—which can include a species, subspecies, or Distinct Population Segment of a vertebrate species (DPS) under section 3(16) of the Act—meets the definition of ''endangered species'' or ''threatened species,'' the species must be listed in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act). See *Defenders,* 729 F. Supp. 2d at 1222 (delisting the Northern Rocky Mountain DPS of gray wolf except in the Wyoming portion of its range (74 FR 15123 (Apr. 2, 2009)) was unreasonable because the Act unambiguously prohibits listing or protecting part of a DPS); *WildEarth Guardians,* 2010 U.S. Dist. LEXIS 105253, at 15–16 (the Service's finding that listing the Gunnison's prairie dog in the ''montane portion'' of its range was warranted (73 FR 6660 (Feb. 5, 2008)) was unreasonable because the Service ''cannot determine that anything other than a species, as defined by the Act, is an endangered or threatened species''). The issue has not been addressed by a Federal Court of Appeals.

For the purposes of this rule, we interpret the SPR phrase in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing a species in its entirety; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be in danger of extinction or likely to become so in the foreseeable future throughout all of its range; or a species may be in danger of extinction or likely to become so throughout a significant portion of its range. If a species is in danger of extinction throughout an SPR, it, the species, is an ''endangered species.'' The same analysis applies to ''threatened species.'' Therefore, the consequence of finding that a species is in danger of extinction or likely to become so throughout a significant portion of its range is that the entire species will be listed as an endangered species or threatened species, respectively, and the Act's protections will be applied to all individuals of the species wherever found.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, for the purposes of this rule, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that such a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation.

For the purposes of this rule, we determine if a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether, *without that portion,* the species in the remainder of its range warrants listing (*i.e.,* is in danger of extinction or likely to become so in the foreseeable future). Conversely, we would not consider the portion of the range at issue to be ''significant'' if the species would not warrant listing in the remainder of its range even if the population in that portion of the range in question became extirpated (extinct locally).

We interpret the term ''range'' to be the general geographical area within which the species is currently found, including those areas used throughout all or part of the species' life cycle, even if not used on a regular basis. We consider the ''current'' range of the species to be the range occupied by the species at the time the Service makes a determination under section 4 of the Act. The phrase ''is in danger'' in the definition of ''endangered species'' denotes a present-tense condition of being at risk of a current or future undesired event. Hence, to say a species ''is in danger'' in an area where it no longer exists—*i.e.,* in its historical range where it has been extirpated—is inconsistent with common usage. Thus, ''range'' must mean ''current range,'' not ''historical range.'' A corollary of this logic is that lost historical range cannot constitute a significant portion of a species' range where a species is in danger of extinction or likely to become so within the foreseeable future (*i.e.,* it cannot be currently in danger of extinction in a portion of its range where it is already extirpated). While we conclude that a species cannot be in danger of extinction in its lost historical range, taking into account the effects of loss of historical range on a species is an important component of determining a species' current and future status.

In implementing these independent bases for listing a species, as discussed above, we list any species in its entirety either because it is in danger of extinction now or likely to become so in the foreseeable future throughout all of its range or because it is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range. With regard to the text of the Act, we note that Congress placed the ''all'' language before the SPR phrase in the definitions of ''endangered species'' and ''threatened species.'' This placement suggests that Congress intended that an analysis based on consideration of the entire range should receive primary focus. Thus, the first step in our assessment of the status of a species is to determine its status throughout all of its range. Depending on the status throughout all of its range, we will subsequently examine whether it is necessary to determine its status throughout a significant portion of its range.

Under section 4(a)(1) of the Act, we determine whether a species is an endangered species or threatened species because of any of the following: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. These five factors apply whether we are analyzing the species' status throughout all of its range or throughout a significant portion of its range.

Kenk's Amphipod Determination of Status Throughout All of Its Range

Our review of the best available information indicates that the Kenk's amphipod is known to be extant at one of the Washington metropolitan area sites and seven of the Virginia sites. We assume that the Sherrill Drive Spring site is extirpated. Although we cannot confirm without additional consecutive negative survey results, given the lack of recent positive surveys and the existing stressors at the other Washington metropolitan area sites, it is possible that these sites are functionally extinct. Three of the Virginia sites were recently discovered during the 2017 surveys of suitable habitat on publicly owned lands. While there appears to be evidence of extirpation at one site (Sherrill Drive Spring) and decline of the species at four Washington metropolitan area sites (East Spring,

Kennedy Spring, Holsinger Spring, and Burnt Mill Spring #6), and one individual was collected at Coquelin Run Spring, the number of Kenk's amphipods found during the 2017 surveys was slightly higher at two of the previously known Fort A.P. Hill sites (Mount Creek #2 and Upper Mill Creek #2), the same at one previously known Fort A.P. Hill site (Mill Creek #4), and higher at two new sites on Fort A.P. Hill (Mill Creek #56 and Mill Creek #59); one of the previously known Fort A.P. Hill sites was not surveyed (Mill Creek #5) due to lack of spring flow. In addition, the species was newly discovered at the Voorhees Nature Preserve. It is possible that the species could be found at additional locations in Virginia based on the amount of yet-to-be-surveyed suitable habitat.

The habitat loss and degradation (Factor A) from poor water quality parameters associated with urban runoff affecting the Kenk's amphipod at the six Washington metropolitan area sites, despite existing regulatory mechanisms (Factor D), are likely to be exacerbated in the future by the increasing risk of exposure to breaks and leaks from the aging sewer and water pipe infrastructure (Factor A), as well as the predicted more frequent and intense rainfall events, resulting in sheet flow events, due to the effects of climate change (Factor E). However, poor water quality associated with urban runoff is not affecting the species at the seven sites in Virginia. Interspecific competition (Factor E) from larger amphipod species may also be affecting the Kenk's amphipod at some of the Washington metropolitan area sites, but the available information is inconclusive, and those larger amphipod species, while found at some of the Virginia sites, have not been found in large numbers (Hobson 2017b, pers. comm.). Overutilization (Factor B), disease (Factor C), and predation (Factor C) are not known to be factors affecting the Kenk's amphipod at any site. It is possible that the effects of small population dynamics (Factor E) may be having an effect at some, if not all, of the species' locations, but there is some uncertainty associated with that hypothesis given the species' known ability to move back and forth between the ground water and surface areas of the seeps and given the survey data indicating the species can reappear, sometimes in higher numbers of individuals, after several years of absence. It is also possible that increasing air temperatures as a result of climate change (Factor E) will cause ground water temperatures to eventually increase, that the ground water will become too warm by the end of the century for the Kenk's amphipod to successfully reproduce, and that higher ground water temperatures will increase the species' exposure, and sublethal and lethal response, to contaminants. However, there is some uncertainty associated with that hypothesis given the long timeframes (*e.g.,* more than 50 years) associated with the climate modelling and the unknown water temperature tolerance of the Kenk's amphipod.

Although there are some stressors that are expected to continue to result in the degradation and loss of some habitat sites for the Kenk's amphipod, the risk of the species significantly declining across its range in the near term is very low given that it has persisted, albeit at decreased levels, despite historical levels of habitat loss in the Washington metropolitan area. Factors in favor include the species' presence in relatively higher numbers at the Virginia sites. Furthermore, the existing stressors are not likely to cause species-level effects in the near term. The documented persistence of the species at one location in the Washington metropolitan area and seven locations in Virginia provides redundancy, resiliency, and representation to sustain the species beyond the near term. Therefore, we conclude that the risk of extinction of the Kenk's amphipod in the near term is sufficiently low that it does not meet the definition of an endangered species under the Act.

The Act defines a threatened species as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' A key statutory difference between an endangered species and a threatened species is the timing of when the relevant threats would begin acting upon a species such that it is in danger of extinction *now* (endangered species) or likely to become so in the *foreseeable future* (threatened species).

The foreseeable future refers to the extent to which we can reasonably rely on predictions about the future in making determinations about the future conservation status of the species (U.S. Department of the Interior, Solicitor's Memorandum, M–37021, January 16, 2009). We must look not only at the foreseeability of threats, but also at the foreseeability of the impact of the threats on the species (U.S. Department of the Interior's Solicitor's Memorandum, M–37021, January 16, 2009).

In considering the foreseeable future as it relates to the status of the Kenk's amphipod, we considered the extent to which we could reliably predict the species' risk of extinction over time. Our ability to make reliable predictions into the future for the Kenk's amphipod is informed by the species' survey data; the potential effects to the species from ongoing and predicted stressors, as well as the uncertainty surrounding the species' response to those stressors; and ongoing and future conservation measures to address the known stressors. The future timeframe for this analysis is 30 years, which is a reasonably long time to consider as the foreseeable future given the Kenk's amphipod's life history and the temporal scale associated with the patterns of survey data and the past and current stressors outlined in the best available data. The timeframe for foreseeable future is based, in part, on projecting forward. A similar timeframe encompassed by the historical survey results shows decades in which the species was present, absent, and then present again at some seep sites. This timeframe also captures our best professional judgment of the projected potential range of future conditions related to the effects of climate change (*i.e.,* the period in which the species' response to the potential effects of climate change are reliably predictable) and cumulative effects.

Since the analysis of potential effects from climate change was an important consideration in our analysis, it was necessary to consider a long enough timeframe to adequately evaluate those potential effects. However, we did not extend our risk assessment forecasting used in the listing determination process out as far as the existing climate change models (*e.g.,* models that forecast effects over 80 years) discussed in the proposed listing rule (81 FR 67270) due to (1) the increased uncertainty in the model results (*i.e.,* the confidence intervals associated with temperature and precipitation projections); (2) the higher level of uncertainty of how the species may respond to any potential changes in its habitat that may result from changes in temperature and precipitation patterns; and (3) uncertainty associated with how society will respond to the predicted change in climate (*e.g.,* take actions that will mediate or accelerate global emissions) that far into the future. As an example of biological uncertainty, there are significant questions regarding the extent to which the number of Kenk's amphipods observed at the seep surface accurately reflects the actual population at each site given the species' known

ability to move between the surface and subsurface habitat.

These uncertainties are additive and undermine the Service's confidence in making a risk assessment projection beyond 30 years. Therefore, as further described below, a projection of the threats and the effects to the species of 30 years represents the timeframe over which the Service considers a reliable prediction to be possible.

As we concluded above, the stressors likely to have the greatest influence on the Kenk's amphipod's viability over time include: Changes in habitat quality and quantity resulting from urbanization in the Washington metropolitan areas and the potential for the effects of small population dynamics and increased ground water temperatures due to climate change at all sites. Given the risk factors affecting the species currently and/or potentially in the future, we determined the following:

- The best available information indicates that the risk is low that changes in habitat quality resulting from changes in temperature will result in aggregate or species-level effects in the foreseeable future.
- There is significant uncertainty regarding the timeframe in which the predicted climate-induced changes to air temperature will manifest in ground water (*i.e.,* whether those changes will occur within the foreseeable future).
- There is significant uncertainty regarding the extent to which the number of Kenk's amphipods observed at the seep surface accurately reflects the actual population at each site given the species' known ability to move between the surface and subsurface habitat. The best available data indicate that the risk of the dynamics of small population size affecting the species is low because even if the species may exist in low numbers at most or all of the 13 known sites, it is very unlikely that all of the sites would be exposed to catastrophic or stochastic events at the same time. Therefore, the species is not likely to be extirpated at most or all of the sites within the foreseeable future.

Taking into account the effects of the most likely stressors and the potential for cumulative effects to the species, our projections for foreseeable future conditions are that the risk is low that the Kenk's amphipod will not continue to be distributed across multiple seep sites within the species' current range. These multiple areas will help the Kenk's amphipod withstand catastrophic events; meaning the risk is low that a significant weather or other event will cause extirpation of the species at most or all sites. Also, we project that the risk is low that the species will not continue to be present in multiple areas, especially in Virginia, in adequate abundance to withstand stochastic events. For example, the risk is low that a training or hunting event at Fort A.P. Hill causing damage to a seep site will cause extirpation of the species at that site.

Based on our analysis of the species' redundancy, resiliency, and representation, and our consideration of the species' future stressors and conservation measures to address those stressors, we conclude that the Kenk's amphipod is likely to remain at a sufficiently low risk of extinction such that it is not likely to become in danger of extinction in the foreseeable future and thus does not meet the definition of a threatened species under the Act.

Determination of Status Throughout a Significant Portion of Its Range

Consistent with our interpretation that there are two independent bases for listing species as described above, after examining the species' status throughout all of its range, we now examine whether it is necessary to determine its status throughout a significant portion of its range. We must give operational effect to both the ''throughout all'' of its range language and the SPR phrase in the definitions of ''endangered species'' and ''threatened species.'' The Act, however, does not specify the relationship between the two bases for listing. As discussed above, to give operational effect to the ''throughout all'' language that is referenced first in the definition, consideration of the species' status throughout the entire range should receive primary focus and we should undertake that analysis first. In order to give operational effect to the SPR language, the Service should undertake an SPR analysis if the species is neither in danger of extinction nor likely to become so in the foreseeable future throughout all of its range, to determine if the species should nonetheless be listed because of its status in an SPR. Thus, we conclude that to give operational effect to both the ''throughout all'' language and the SPR phrase, the Service should conduct an SPR analysis if (and only if) a species does not warrant listing according to the ''throughout all'' language.

Because we determined that the Kenk's amphipod is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we will consider whether there are any significant portions of its range in which the Kenk's amphipod is in danger of extinction or likely to become so.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, as noted above, for the purposes of this rule, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that such a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation because decreases in the redundancy, resiliency, and representation of a species lead to increases in the risk of extinction for the species. *Redundancy* (having multiple resilient populations considering genetic and environmental diversity) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Resiliency* describes the characteristics of a species that allow it to recover from stochastic events or periodic disturbance. *Representation* (the range of variation found in a species) ensures that the species' ability to adapt to changing environments is conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristics of a species or area may contribute to all three. For example, distribution across a wide variety of habitats is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one of these concepts.

For the purposes of this rule, we determine if a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether, *without that portion,* the representation, redundancy, or resiliency of the species would be so impaired that the species would be in danger of extinction or likely to become

so in the foreseeable future (*i.e.,* would be an ''endangered species'' or a ''threatened species''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction or likely to become so throughout its range even if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' establishes a threshold that is relatively high. Given that the outcome of finding a species to be in danger of extinction or likely to become so in an SPR would be to list the species and apply protections of the Act to all individuals of the species wherever found, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: Listing would be rangewide, even if only a portion of the range with minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species' being currently in danger of extinction or likely to become so. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this rule carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions would be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase ''throughout a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that the species' current level of imperilment in the portion results in the species currently being in danger of extinction or likely to become so throughout all of its range.

Under the definition of ''significant'' used in this rule, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that, if the portion rises to the higher level of biological significance and the species is in danger of extinction or likely to become so in the foreseeable future in that portion, then the species would already be in danger of extinction or likely to become so in the foreseeable future throughout all of its range. We would accordingly list the species as threatened or endangered throughout all of its range by virtue of the species' rangewide status so we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation we ask whether the species would be in danger of extinction or likely to become so everywhere without that portion, *i.e.,* if the species were hypothetically completely extirpated from that portion. In other words, the portion of the range need not be so important that its current status in that portion of its range—being merely in danger of extinction, or likely to become so in the foreseeable future—is sufficient to cause the species to be in danger of extinction or likely to become so in the foreseeable future throughout all of its range. Instead, we evaluate whether the *complete extirpation* (in a hypothetical future) of the species in that portion would at that point cause the species throughout its remaining range to be in danger of extinction or likely to become so in the foreseeable future.

We are aware that the court in *Center for Biological Diversity* v. *Jewell* found that this definition of ''significant'' does not give sufficient independent meaning to the SPR phrase. However, that decision was based on two misunderstandings about the interpretation of ''significant.'' First, the court's decision was based on its finding that, as with the interpretation that the court rejected in *Defenders*, the definition of ''significant'' does not allow for an independent basis for listing. However, this definition of ''significant'' is not the same as the definition applied in *Defenders,* which looked at the current status within the portion and asked what the current effect on the entire range of the species is. By contrast, this definition of ''significant'' looks at a future hypothetical loss of all members within the portion and asks what the effect on the remainder of the species would be; the current status of the species in that portion is relevant *only* for determining the listing status if the portion has been determined to be significant. This definition of ''significant'' establishes a lower threshold than requiring that the species' current status in that portion of its range is already causing the species to be in danger of extinction throughout all of its range or likely to become so in the foreseeable future. In other words, this definition of ''significant'' captures circumstances that would not be captured by the definition used in *Defenders,* or by analyzing whether a species is in danger of extinction or likely to become so throughout all of its range: A species that is *not* currently likely to become an endangered species in the foreseeable future, but would be if a particular important portion of its range is completely lost, can nonetheless be listed now if the species in that portion is threatened or endangered (as opposed to only after the portion is in fact lost, as would be the case if the SPR language did not exist).

The second misunderstanding was the court's characterization of the listing determination for the African coelacanth as an indication that the Service and National Marine Fisheries Service (NMFS) have had difficulty accurately applying this definition of ''significant.'' However, in that listing determination, the conclusion was that the species was not in danger of extinction throughout all of its range or likely to become so in the foreseeable future but it did warrant listing because of its status in a significant portion of its range. The only reason for not listing the entire species was that the population in that portion of the range met the definition of a DPS, and therefore the agency listed the DPS instead of the entire species. The population in an SPR is not automatically a DPS so, contrary to the court's reasoning, the definition of ''significant'' can be applied and result in listing a species that would not otherwise be listed. (We also note another instance, in addition to the one cited in this case, in which this definition has been effectively applied. In the proposed rule to list the giant manta ray as a threatened species (82 FR 3694; January 12, 2017), NMFS found that the giant manta ray was not currently in danger of extinction or likely to become so in the foreseeable future throughout all of its range because the Atlantic populations were not experiencing the same risks as the Pacific populations. However, they did find that the Pacific populations constituted an SPR, because, without that portion, the smaller and more

sparsely distributed populations in the Atlantic would become vulnerable to demographic risks and would be likely to become in danger of extinction in the foreseeable future. Accordingly, the giant manta ray is proposed to be listed as a threatened species.) In light of these flaws, we are currently seeking reconsideration of the district court's decision.

To undertake this analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that there are any portions of the species' range: (1) That may be ''significant,'' and (2) where the species may be in danger of extinction or likely to become so in the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range—rather, it is a step in determining whether a more-detailed analysis of the issue is required.

In practice, one key part of identifying portions for further analysis may be whether the threats or effects of threats are geographically concentrated in some way. If a species is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range and the threats to the species are essentially uniform throughout its range, then the species is not likely to be in danger of extinction or likely to become so in the foreseeable future in any portion of its range. Moreover, if any concentration of threats applies only to portions of the species' range that are not ''significant,'' such portions will not warrant further consideration.

If we identify any portions (1) that may be significant and (2) where the species may be in danger of extinction or likely to become so in the foreseeable future, we engage in a more-detailed analysis to determine whether these standards are indeed met. The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species is in danger of extinction or likely to become so in the foreseeable future in that identified SPR. We must go through a separate analysis to determine whether the species is in danger of extinction or likely to become so in the SPR. To make that determination, we will use the same standards and methodology that we use to determine if a species is in danger of extinction or likely to become so in the foreseeable future throughout all of its range.

Once we have identified portions of the species' range for further analysis, we conduct a detailed analysis of the significance of the portion and the status of the species in that portion. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. If we address significance first and determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is in danger of extinction or likely to become so in the foreseeable future there; if we address the status of the species in portions of its range first and determine that the species is not in danger of extinction or likely to become so in a portion of its range, we do not need to determine if that portion is ''significant.''

Kenk's Amphipod Determination of Significant Portion of Its Range

Applying the process described above, to identify whether any portions warrant further consideration, we determine whether there is substantial information indicating that (1) particular portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future.

To identify portions where the species may be in danger of extinction or likely to become so in the foreseeable future, we consider whether there is substantial information to indicate that any threats or effects of threats are geographically concentrated in any portion of the species' range.

We evaluated the current range of the Kenk's amphipod to determine if there are any apparent geographic concentrations of potential threats to the species. The risk factors that occur throughout the Kenk's amphipod's range include the potential for the effects of small population dynamics and the potential for increased ground water temperature resulting from the effects of climate change. Habitat loss and degradation from poor water quality parameters associated with urban runoff, however, is occurring both currently and in the foreseeable future solely at the six Washington metropolitan area sites. Thus, this one area of the species' range is subject to a type of habitat loss and degradation that is *not* affecting the species uniformly throughout its range. We identify the Washington metropolitan area sites as a portion where the species may be in danger of extinction or likely to become so in the foreseeable future. We next consider whether this portion may be significant. We can accomplish this by considering the biological or conservation importance of the portion.

While the six Washington metropolitan area sites represent 46 percent of the Kenk's amphipod's known populations and represent a diversity of sites because they occur on one of the two known geological formations, the risk is low that, should the species become extirpated in all of those locations, that loss would be sufficient to cause the remainder of the species to be in danger of extinction or likely to become so within the foreseeable future, given the Kenk's amphipod would still be present in 54 percent of its range (*e.g.,* the seven Virginia sites). The Virginia sites are protected against the effects of poor water quality parameters.

We have identified the Washington metropolitan area sites as a portion where the species may be in danger of extinction or likely to become so in the foreseeable future. However, there is not substantial information to indicate that this portion is significant. Therefore, this portion does not warrant further consideration to determine whether the species may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range.

To identify portions that may be significant, we consider whether there is substantial information to indicate that there are any natural divisions within the range or other areas that might be of biological or conservation importance. We identified the Virginia sites (spring seeps on Fort A.P. Hill and the Voorhees Nature Preserve) as a portion that may be significant. These sites are separated from the Washington metropolitan area sites by 60 mi (97 km). The spring sites in these areas occur in the Calvert geologic formation, whereas the Washington metropolitan area sites occur in the Wissahickon geologic formation. Given the separation between the Washington metropolitan sites and the Virginia sites and the inability of the Kenk's amphipod to travel long distances, we conclude that there is no genetic exchange between these two areas. Therefore, we find that there is substantial information that there are natural divisions between the Virginia and Washington metropolitan sites and that the Virginia site may be significant. We did not find substantial evidence that the Washington metropolitan sites are a significant portion because, without that portion, there is no reasonable likelihood that the remainder of the species (*i.e.,* those at the Virginia

sites) would be in danger of extinction or likely to become so in the foreseeable future, due to the paucity of threats affecting the Virginia sites.

We have identified the Virginia sites as a portion that may be significant. We next consider whether the species may be in danger of extinction or likely to become so in the foreseeable future in this portion. We can accomplish this task by considering whether there is substantial information indicating that there are any threats to or effects of threats on the species that are concentrated in that portion. The Virginia sites are not affected by the same threats we identified for the Washington metropolitan area sites (*e.g.,* water quality impacts and habitat degradation), because the Virginia sites occur in areas where land use is primarily agriculture and forest with little impervious surface and spring sites are surrounded by large forest buffers that would filter out any potential effects of runoff from the agricultural areas. We do not find there is substantial information indicating there is a concentration of threats in the Virginia portion.

We have identified that the Virginia portion may be significant. However, there is not substantial information to indicate that the species may be in danger of extinction or likely to become so in the foreseeable future in this portion. Therefore, this portion does not warrant further consideration to determine whether the species may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range.

Our review of the best available scientific and commercial information indicates that the Kenk's amphipod is not in danger of extinction (endangered) or likely to become endangered within the foreseeable future (threatened) throughout all or a significant portion of its range. Therefore, we find that listing the Kenk's amphipod as an endangered or threatened species under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the Kenk's amphipod to our Chesapeake Bay Field Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor the Kenk's amphipod and encourage its conservation. If an emergency situation develops for the Kenk's amphipod, we will act to provide immediate protection.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Chesapeake Bay Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Chesapeake Bay Field Office and the Northeast Regional Office.

Dated: September 7, 2017.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2017–21052 Filed 9–28–17; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 82, No. 188
Friday, September 29, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–DA–17–0055]

Notice of Request for Extension and Revision of a Currently Approved Information Collection for the Dairy Product Mandatory Reporting Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension and revision of a currently approved information collection under the Dairy Product Mandatory Reporting Program. The information collected supports the marketing of dairy products and is used to verify compliance with Federal milk marketing regulations.

DATES: Comments on this notice must be received by November 28, 2017, to be considered.

ADDRESSES: Comments should be submitted at the Federal eRulemaking portal: *www.regulations.gov.* Comments may also be filed with Roger Cryan, Director, Economics Division, USDA/AMS/Dairy Program, STOP 0229—Room 2753, 1400 Independence Avenue SW., Washington, DC 20250–0229; *roger.cryan@ams.usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register**, as well as OMB No. 0581–0274 and the Dairy Product Mandatory Reporting Program. All comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Roger Cryan, Director, Economics Division, USDA/AMS/Dairy Program, STOP 0229—Room 2753, 1400 Independence Avenue SW., Washington, DC 20250–0229; *roger.cryan@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Dairy Products Mandatory Sales Reporting.

OMB Number: 0581–0274.

Expiration Date of Approval: April 30, 2018.

Type of Request: Extension and revision of a currently approved collection.

Abstract: Under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*), as amended, persons engaged in manufacturing dairy products are required to provide to the Department of Agriculture (USDA) certain information, including the price, quantity, and moisture content, where applicable, of dairy products sold by the manufacturer. Manufacturers and other persons storing dairy products must also report to USDA information on the quantity of dairy products stored. This information is used by USDA to help administer Federal programs and is used by the dairy industry in planning, pricing, and projecting supplies of milk and milk products.

Under the Dairy Product Mandatory Reporting Program (7 CFR part 1170), various manufacturer reports are filed electronically on a weekly basis. USDA publishes composites of the information obtained to help industry members make informed marketing decisions regarding dairy products. The information is also used to establish minimum prices for Class III and Class IV milk under Federal milk marketing orders. Additional paper forms are filed by manufacturers on an annual basis to validate participation in the mandatory reporting program. USDA uses the information collected to verify compliance with applicable regulations.

Only authorized representatives of USDA, including AMS Dairy Program's regional and headquarters staff, have access to information provided on the forms.

Requesting public comments on the information collection and forms described below is part of the process to obtain approval through the Office of Management and Budget (OMB). Forms needing OMB approval are contained in OMB No. 0581–0274 and include forms for reporting cheddar cheese price, volume, and moisture content (DY–202 and DY–203); butter price and volume (DY–201); nonfat dry milk price and volume (DY–205); and dry whey price and volume (DY–204). Annual validation information is reported on Forms DA–230 and DA–230–S. Manufacturers and others who are required to file reports under this program must also maintain original records associated with the sale and storage of dairy products for two years and must make those records available to USDA upon request. Manufacturers who produce and market less than one million pounds of cheddar cheese, butter, nonfat dry milk, or dry whey are exempt from the reporting requirements for those products.

Information collection requirements included in this request for an extension are as follows:

(1) Dairy Products Sales, Cheddar Cheese, 40-Pound Blocks

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: Cheddar cheese manufacturers of 40-pound blocks. Each reporting entity may report for a single cheddar cheese plant or it may report for more than one cheddar cheese plant, depending upon how the business is structured.

Estimated Number of Respondents: 16.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 277 hours.

(2) Dairy Products Sales, Cheddar Cheese, 500-Pound Barrels

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: Cheddar cheese manufacturers of 500-pound barrels. Each reporting entity may report for a single cheddar cheese plant or it may report for more than one cheddar cheese plant, depending upon how the business is structured.

Estimated Number of Respondents: 13.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 225 hours.

(3) Dairy Products Sales, Butter

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: Butter manufacturers. Each reporting entity may report for a single butter plant or it may report for more than one butter plant, depending upon how the business is structured.

Estimated Number of Respondents: 22.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 381 hours.

(4) Dairy Products Sales, Nonfat Dry Milk

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: Nonfat dry milk (NFDM) manufacturers. Each reporting entity may report for a single NFDM plant or it may report for more than one NFDM plant, depending upon how the business is structured.

Estimated Number of Respondents: 29.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 503 hours.

(5) Dairy Products Sales, Dry Whey

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: Dry whey manufacturers. Each reporting entity may report for a single dry whey plant or it may report for more than one dry whey plant, depending upon how the business is structured.

Estimated Number of Respondents: 18.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 312 hours.

(6) Annual Validation Survey

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 20 minutes per year for each report submitted.

Respondents: Dairy manufacturers. Each reporting entity may report for a single plant or it may report for more than one plant, depending upon how the business is structured.

Estimated Number of Respondents: 114.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 38 hours.

(7) Survey Follow-Up, Verification

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 5 minutes for each contact from AMS.

Respondents: Dairy manufacturers. Each reporting entity may report for a single plant or it may report for more than one plant, depending upon how the business is structured. AMS may contact manufacturers as necessary to follow up on missing or incomplete reports and ensure that accurate information is provided.

Estimated Number of Respondents: 7.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 30 hours.

Comments are invited on: (1) Whether the proposed collection of the 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.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 25, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–20870 Filed 9–28–17; 8:45 am]

BILLING CODE 3410–02–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Indiana Advisory Committee To Prepare for Its Public Meeting on Voting Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Indiana Advisory Committee (Committee) will hold a meeting on Wednesday, October 18, 2017, at 3:00 p.m. EST for the purpose of preparing for its public meeting on voting rights issues in the state.

DATES: The meeting will be held on Wednesday, October 18, 2017, at 3:00 p.m. EST.

Public Call Information: Dial: 888–334–3032, Conference ID: 3050931.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–334–3032, conference ID: 3050931. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they

become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Indiana Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=247*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit Office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Substantive and Logistical Questions for the Public Meeting
Public Comment
Future Plans and Actions
Adjournment

Dated: September 25, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–20864 Filed 9–28–17; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Colorado Advisory Committee to the Commission will by teleconference at 5:00 p.m. (MDT) on Wednesday, October 18, 2017. The purpose of the meeting is to discuss next steps after briefing meeting on the Blaine Amendment in Denver on July 2017.

DATES: Wednesday, October 18, 2017, at 5:00 p.m. MDT.

Public Call-In Information: Conference call-in number: 1–877–440–5807 and conference call 8143035.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ebohor@usccr.gov* or by phone at 303–866–1040.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–877–440–5807 and conference call 8143035. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–877–440–5807 and conference call 8143035.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1040, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/committee/meetings.aspx?cid=238;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone numbers, email or street address.

Agenda

Wednesday, October 18, 2017

- Rollcall and Welcome
- Next Steps After Briefing on Blaine Amendment
- Open Comment
- Adjourn

Dated: September 26, 2017

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–20909 Filed 9–28–17; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Alabama Advisory Committee for Orientation and To Discuss Civil Rights Topics in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Alabama Advisory Committee (Committee) will hold a meeting on Thursday, October 12, 2017, at 11:00 a.m. (Central) for the purpose of orientation and a discussion on civil rights topics affecting the state.

DATES: The meeting will be held on Thursday, October 12, 2017, at 11:00 a.m. (Central) PUBLIC CALL INFORMATION: Dial: 877–741–4242, Conference ID: 3852401.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 877–741–4242, conference ID: 3852401. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the

Commission at (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Alabama Advisory Committee link (*http://www.facadatabase.gov/committee/committee.aspx?cid=233&aid=17*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Civil Rights Topics in Alabama
Next Steps
Public Comment
Adjournment

Dated: September 25, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–20862 Filed 9–28–17; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee for Orientation and To Discuss the Draft Report of Broken Windows Policing

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New York Advisory Committee (Committee) will hold a meeting on Friday, October 13, 2017, at 12:00 p.m. (Eastern) for the purpose of a discussion on the draft report of Broken Windows Policing.

DATES: The meeting will be held on Friday, October 13, 2017, at 12:00 p.m. EST.

Public Call Information: Dial: 888–430–8709, Conference ID: 9222517

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–430–8709, conference ID: 9222517. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, New York Advisory Committee link (*https://www.facadatabase.gov/committee/committee.aspx?cid=265&aid=17*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion on Draft Report
Future Plans and Actions
Public Comment
Adjournment

Dated: September 25, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–20863 Filed 9–28–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Meeting of Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis, Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, Pub. L. 97–375 and Pub. L. 105–153), we are announcing a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting will focus on current work and future plans for measuring quality adjusted prices for medical care and high tech goods and services; and provide an update on seasonal adjustment work in the national accounts.

DATES: Friday, November 3, 2017. The meeting will begin at 9:00 a.m. and adjourn at 3:30 p.m.

ADDRESSES: The meeting will take place at the Suitland Federal Center, which is located at 4600 Silver Hill Road, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: Virginia Henriksen, U.S. Department of Commerce, Bureau of Economic Analysis, Suitland, MD 20746; telephone number: (301) 278–9013.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, especially in areas of new and rapidly growing economic activities arising from innovative and advancing technologies, and provides recommendations from the perspectives of the economics profession, business, and government. This will be the Committee's thirtieth meeting.

Public participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Virginia Henriksen of BEA at (301) 278–9013 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language

interpretation or other auxiliary aids should be directed to Virginia Henriksen at (301) 278–9013.

Dated: September 22, 2017.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

[FR Doc. 2017–20970 Filed 9–28–17; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Applications for Trademark Registration

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on a proposed extension of an existing information collection: 0651–0009 (Applications for Trademark Registration).

DATES: Written comments must be submitted on or before November 28, 2017.

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

- *Email: InformationCollection@uspto.gov.* Include ''0651–0009 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Marcie Lovett, Records and Information Governance Division Director, Office of the Chief Technology Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Catherine Cain, Attorney Advisor, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–8946; or by email to *Catherine.Cain@uspto.gov* with ''0651–0009 comment'' in the subject line. Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION

I. Abstract

The United States Patent and Trademark Office (USPTO) administers the Trademark Act, 15 U.S.C. 1051 *et seq.,* which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses who use their marks, or intend to use their marks, in commerce regulated by Congress may file an application with the USPTO to register their marks. Registered marks remain on the register indefinitely, so long as the owner of the registration files the necessary maintenance documents. The rules implementing the Trademark Act are set forth in 37 CFR part 2.

The Act and rules mandate that each certificate of registration include the mark, the particular goods and/or services for which the mark is registered, the owner's name, dates of use of the mark in commerce, and certain other information. The USPTO also provides similar information to the public concerning pending applications. Individuals or businesses may determine the availability of a mark by accessing the register through the USPTO's Web site: *www.uspto.gov/trademark.* Accessing and reviewing the USPTO's publicly available information may reduce the possibility of initiating use of a mark previously registered or adopted by another. Thus, the Federal trademark registration process reduces unnecessary litigation and its associated costs and burdens.

Trademarks can be registered on either the Principal or Supplemental Register. Registrations on the Principal Register confer all of the benefits of registration provided under the Trademark Act. Certain marks that are not eligible for registration on the Principal Register, but are capable of functioning as a trademark, may be registered on the Supplemental Register. Registrations on the Supplemental Register cannot be transferred to the Principal Register, but owners of registrations on the Supplemental Register may apply for registration of their marks on the Principal Register.

The information in this collection can be submitted in paper format or electronically through the Trademark Electronic Application System (TEAS). Applicants who file using the TEAS RF or TEAS Plus forms pay a lower filing fee than applicants who file using the TEAS Regular form. These applicants must agree to file certain communications regarding the application through TEAS and to receive communications by email. TEAS Plus users must also file a ''complete'' application, select their identification(s) of goods/services from the USPTO's Acceptable Identification of Goods and Services Manual, and pay the fees for all classes at the time of filing. TEAS Plus applications are only available for trademark/service mark applications. There are no TEAS Plus application forms available for certification marks, collective marks, collective membership marks, and applications for registration on the Supplemental Register at this time.

II. Method of Collection

Electronically via TEAS forms, by mail, or by hand delivery.

III. Data

OMB Number: 0651–0009.

Instrument Number(s): PTO Forms 1478, 1479, 1480, 1481, 1482.

Type of Review: Extension of a Previously Existing Information Collection.

Affected Public: Businesses or other for-profits; not-for-profit institutions; individuals.

Estimated Number of Respondents: 437,599 responses per year.

Estimated Time per Response: The USPTO estimates that it takes the public approximately 23 minutes (0.38 hours) to 35 minutes (0.58 hours) to complete this information, depending on the application. This includes the time to gather the necessary information, prepare the application, and submit the complete request to the USPTO. The time estimates shown for the electronic forms in this collection are based on the average amount of time needed to complete and electronically file the associated form.

Estimated Total Annual Respondent Burden Hours: 205,854.64 hours per year.

Estimated Total Annual Respondent Cost Burden: $90,164,332.32. The USPTO expects that associated attorneys will complete these applications. The professional hourly rate for attorneys is $438. The rate is established by estimates in the 2017 Report on the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association. Using this hourly rate, the USPTO estimates that the total respondent cost burden for this collection is $90,164,332.32 per year.

IC No.	Item	Estimated time for responses (hours) (a)	Estimated responses (b)	Estimated burden hours (c) (a) × (b)	Rate (d)	Estimated respondent cost (e) (c) × (d)
1	Use-Based Trademark/Service Mark Applications (Paper).	0.58 (35 minutes)	58	33.64	$438.00	$14,734.32
1	Use-Based Trademark/Service Mark Applications (TEAS).	0.50 (30 minutes)	7,752	3,876.00	438.00	1,697,688.00
1	Use-Based Trademark/Service Mark Applications (TEAS RF).	0.50 (30 minutes)	94,756	47,378.00	438.00	20,751,564.00
1	Use-Based Trademark/Service Mark Applications (TEAS Plus).	0.58 (35 minutes)	82,053	47,590.74	438.00	20,844,744.12
2	Intent to Use Trademark/Service Mark Application (Paper).	0.47 (28 minutes)	70	32.90	438.00	14,410.20
2	Intent to Use Trademark/Service Mark Application (TEAS).	0.38 (23 minutes)	9,390	3,568.20	438.00	1,562,871.60
2	Intent to Use Trademark/Service Mark Application (TEAS RF).	0.38 (23 minutes)	114,779	43,616.02	438.00	19,103,816.76
2	Intent to Use Trademark/Service Mark Application (TEAS Plus).	0.47 (28 minutes)	99,392	46,714.24	438.00	20,460,837.12
3	Applications for Registration of Trademark/Service Mark under § 44 (Paper).	0.50 (30 minutes)	9	4.50	438.00	1,971.00
3	Applications for Registration of Trademark/Service Mark under § 44 (TEAS).	0.40 (24 minutes)	1,232	492.80	438.00	215,846.40
3	Applications for Registration of Trademark/Service Mark under § 44 (TEAS RF).	0.40 (24 minutes)	15,064	6,025.60	438.00	2,639,212.80
3	Applications for Registration of Trademark/Service Mark under § 44 (TEAS Plus).	0.50 (30 minutes)	13,044	6,522.00	438.00	2,867,636.00
Totals			437,599	205,854.64		90,164,332.32

Estimated Total Annual (Non-hour) Respondent Cost Burden: $109,770,653.13. There are no capital start-up, maintenance, or operating fees associated with this information collection. However, this collection does have annual (non-hour) cost burden in the form of filing fees, processing fees, and postage costs. The USPTO amended its rules to set, increase or decrease certain trademark fees, effective January 14, 2017 affecting many of the fees in this collection.

There is also an annual (non-hour) cost burden associated with this collection in the form of filing fees. Applicants who file their applications electronically instead of submitting them on paper pay a reduced filing fee. Those who choose to file TEAS RF or TEAS Plus applications pay a further reduced fee. An application must include a filing fee for each class of goods and services. Therefore, the total filing fees associated with this collection can vary depending on the number of classes in each application.

The total filing fees of $109,561,086.00, shown in the table below, reflect the minimum filing fees associated with this information collection.

IC No.	Item	Responses (a)	Filing fee (b)	Total filing fee cost (c) (a) × (b)
1	Use-Based Trademark/Service Mark Applications (Paper)	58	$600.00	$34,800.00
1	Use-Based Trademark/Service Mark Applications (TEAS)	7,752	400.00	3,100,800.00

IC No.	Item	Responses (a)	Filing fee (b)	Total filing fee cost (c) (a) × (b)
1	Use-Based Trademark/Service Mark Applications (TEAS RF)	94,756	275.00	26,057,900.00
1	Use-Based Trademark/Service Mark Applications (TEAS Plus)	82,053	225.00	18,461,925.00
2	Intent to Use Trademark/Service Mark Application (Paper)	70	600.00	42,000.00
2	Intent to Use Trademark/Service Mark Application (TEAS)	9,390	400.00	375,600.00
2	Intent to Use Trademark/Service Mark Application (TEAS RF)	114,779	275.00	31,564,225.00
2	Intent to Use Trademark/Service Mark Application (TEAS Plus)	99,392	225.00	22,363,200.00
3	Applications for Registration of Trademark/Service Mark under § 44 (Paper).	9	600.00	5,400.00
3	Applications for Registration of Trademark/Service Mark under § 44 (TEAS).	1,232	400.00	492,800.00
3	Applications for Registration of Trademark/Service Mark under § 44 (TEAS RF)	15,064	275.00	4,127,536.00
3	Applications for Registration of Trademark/Service Mark under § 44 (TEAS Plus).	13,044	225.00	2,934,900.00
Totals		437,599		109,561,086.00

In addition, the USPTO charges a processing fee of $125.00 per class for certain TEAS RF and TEAS Plus applications. If an applicant files a TEAS Plus or TEAS RF application that does not satisfy the relevant requirements for TEAS RF or TEAS Plus, they will be required to submit the additional $125 processing fee to bump the application back up to TEAS Regular. The total processing fees associated with this collection can vary depending on the number of classes in each application.

The total processing fees of $209,500, shown in the table below, reflect the minimum processing fees associated with this information collection.

IC No.	Item	Responses (a)	Processing fee	Total processing fees
1	Processing fee for applications that fail to meet the additional filing and processing requirements for the reduced filing fee (TEAS RF).	898	$125.00	$112,250.00
1	Processing fee for applications that fail to meet the additional filing and processing requirements for reduced filing fee (TEAS Plus).	778	125.00	97,250.00
Totals		1,676		209,500.00

Applicants incur postage costs when submitting the non-electronic information covered by this collection to the USPTO by mail. The USPTO expects that approximately 99 percent of the responses in this collection will be submitted electronically. The USPTO estimates that the overwhelming majority of the paper forms are submitted to the USPTO via first-class mail. The USPTO estimates that 137 will be mailed with a first-class-postage cost of $0.49 per submission. Therefore, the USPTO estimates that the postage costs for this collection will be $67.13.

Therefore, the USPTO estimates that the total annual (non-hour) cost burden for this collection in the form of filing fees ($109,561,086), processing fees ($209,500), and postage costs ($67.13) is $109,770,653.13.

IV. Requests for Comments

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection. They also will become a matter of public record.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimation of the burden (including hours and cost) of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Marcie Lovett,

Records and Information Governance Division Director, OCTO, United States Patent and Trademark Office.

[FR Doc. 2017–20836 Filed 9–28–17; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request; Patent Petitions Related to Application and Reexamination Processing Fees

The United States Patent and Trademark Office (USTPO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: Patent Petitions Related to Application and Reexamination Processing Fees.

OMB Control Number: 0651–0059.

Form Number(s):

- PTO/SB/17P
- PTO/SB/23
- PTO/SB/24a
- PTO/SB/28 (EFS-Web only)
- PTO/SB/140 (EFS-Web only)

Type of Request: Revision of a currently existing collection.

Number of Respondents: 374,972 responses per year.

Average Hours per Response: The USPTO estimates that it takes the public approximately 5 minutes (0.08 hours) to 12 hours to complete items in this collection, depending on the petition. This includes the time to gather the necessary information, prepare the petitions and petition fee transmittals, and submit them to the USPTO. The USPTO estimates that it takes the same amount of time to gather the necessary information, prepare the submission, and submit it electronically as it does to submit the information in paper form.

Burden Hours: 42,195 hours annually.

Cost Burden: $3,147,594.80.

Needs and Uses: USPTO petitions practice provides patent applicants the ability to request certain administrative reviews of USPTO decisions and also supply additional information to applications currently being processed. The public uses the information in this collection to petition for various actions under 37 CFR 1.17(f), (g), and (h), such as petitioning for a suspension of the rules, requesting access to an assignment record, or requesting the withdrawal of an application from issue either before or after paying the issue fee. In addition, the public uses these petitions to request accelerated examination, to request abandonment of an application to avoid publication of said application, and to request certain extensions of time. The public uses the transmittal form to remit the required fees for the various petitions. The USPTO uses the information collected from the petitions and transmittal form to determine whether to grant the various requests and to ensure that the proper fees have been remitted and are processed accordingly.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information can be obtained by:

• *Email: InformationCollection@uspto.gov.* Include ''0651–0059 copy request'' in the subject line of the message.

• *Mail:* Marcie Lovett, Records and Information Governance Division Director, Office of the Chief Technology Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before October 30, 2017 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Marcie Lovett,

Records and Information Governance Division Director, OCTO, United States Patent and Trademark Office.

[FR Doc. 2017–20835 Filed 9–28–17; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Investigation Prosecution and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting

AGENCY: General Counsel of the Department of Defense, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Investigation Prosecution and Defense of Sexual Assault in the Armed Forces will take place.

DATES: Day 1—Open to the public, Thursday, October 19, 2017 from 1:15 p.m. to 5:00 p.m. Day 2—Open to the public, Friday, October 20, 2017 from 8:45 a.m. to 3:15 p.m.

ADDRESSES: One Liberty Center, 875 N. Randolph Street, Suite 1432, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dwight Sullivan, 703–695–1055 (Voice), 703–693–3903 (Facsimile), *dwight.h.sullivan.civ@mail.mil* (Email). Mailing address is DACIPAD, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, Virginia 22203. Web site: *http://dacipad.whs.mil/.* The most up-to-date changes to the meeting agenda can be found on the Web site.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: In section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), Congress tasked the DAC–IPAD to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. This will be the fourth public meeting held by the DAC–IPAD. On the first day of the meeting, the Committee will hear testimony from a former senior airman who is a sexual assault survivor. The Committee will then receive a briefing on the Department of Defense and Military Services' sexual assault-related expedited transfer policies. For the last session of the day, the Committee will hear from senior military special victims' counsel and victims' legal counsel about their experiences assisting clients with expedited transfers and their perspectives on the victims' counsel program. On the second day of the meeting, the Committee will hear from a panel of company, squadron, or Service equivalent commanders and their senior enlisted advisors about the sexual assault military justice and response training they received and their experience dealing with sexual assault allegations. Next, the Committee will hear from a panel of special court-martial convening authorities regarding the sexual assault military justice and response training they received and their experience dealing with sexual assault allegations and making initial case disposition decisions. For the last session, the DAC–IPAD Case Review Working Group will update the Committee on the working group members' review of sample sexual assault cases. Agenda: Thursday, October 19, 2017: 1:15 p.m.–1:30 p.m. Public Meeting Begins—Welcome and Introduction; 1:30 p.m.–2:30 p.m. Perspective of a Sexual Assault Survivor; 2:30 p.m.–3:20 p.m. Briefing on the Department of Defense (DoD) and Military Services' Expedited Transfer Policies; 3:20 p.m.–3:30 p.m. Break; 3:30 p.m.–5:00 p.m. Service Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC) Perspectives on the Expedited Transfer Policy and SVC/VLC Program; 5:00 p.m. Public Meeting Adjourned.

Friday, October 20, 2017: 8:45 a.m.–9:00 a.m. Public Meeting Begins—Welcome and Introduction: 9:00 a.m.—11:30 a.m. Company, Squadron, or

Service Equivalent Commander and Senior Enlisted Advisor Perspectives on Sexual Assault Military Justice Training and Sexual Assault Response Training; 11:30 a.m.–12:30 p.m. Lunch; 12:30 p.m.–2:20 p.m. Special Court Martial Convening Authority Perspectives on Sexual Assault Military Justice Training and Sexual Assault Response Training; 2:30 p.m.–3:00 p.m. Committee Update from DAC–IPAD Case Review Working Group; 3:00 p.m.–3:15 p.m. Public Comment; 3:15 p.m. Public Meeting Adjourned.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. Visitors are required to sign in at the One Liberty Center security desk and must leave government-issued photo identification on file and wear a visitor badge while in the building. Department of Defense Common Access Card (CAC) holders who do not have authorized access to One Liberty Center must provide an alternate form of government-issued photo identification to leave on file with security while in the building. All visitors must pass through a metal detection security screening. Individuals requiring special accommodations to access the public meeting should contact the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made. In the event the Office of Personnel Management closes the government due to inclement weather or for any other reason, please consult the Web site for any changes to the public meeting date or time.

Written Statements: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Committee about its mission and topics pertaining to this public session. Written comments must be received by the DAC–IPAD at least five (5) business days prior to the meeting date so that they may be made available to the Committee members for their consideration prior to the meeting. Written comments should be submitted via email to the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the DAC–IPAD operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Oral statements from the public will be permitted, though the number and length of such oral statements may be limited based on the time available and the number of such requests. Oral presentations by members of the public will be permitted from 3:00 p.m. to 3:15 p.m. on October 20, 2017, in front of the Committee members.

Dated: September 25, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–20882 Filed 9–28–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board Meeting Notice

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the U.S. Army Corps of Engineers, Inland Waterways Users Board (Board). This meeting is open to the public. For additional information about the Board, please visit the committee's Web site at *http://www.iwr.usace.army.mil/Missions/Navigation/InlandWaterwaysUsersBoard.aspx.*

DATES: The Army Corps of Engineers, Inland Waterways Users Board will meet from 8:00 a.m. to 12:00 p.m. on November 3, 2017. Public registration will begin at 7:15 a.m.

ADDRESSES: The Inland Waterways Users Board meeting will be conducted at the Vicksburg Convention Center, 1600 Mulberry Street, Vicksburg, Mississippi 39180, 601–630–2929.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Pointon, the Designated Federal Officer (DFO) for the committee, in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GM, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–428–6438; and by email at *Mark.Pointon@usace.army.mil.* Alternatively, contact Mr. Kenneth E. Lichtman, the Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GW, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–428–8083; and by email at *Kenneth.E.Lichtman@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The Board is chartered to provide independent advice and recommendations to the Secretary of the Army on construction and rehabilitation project investments on the commercial navigation features of the inland waterways system of the United States. At this meeting, the Board will receive briefings and presentations regarding the investments, projects and status of the inland waterways system of the United States and conduct discussions and deliberations on those matters. The Board is interested in written and verbal comments from the public relevant to these purposes.

Agenda: At this meeting the agenda will include the status of FY 2018 funding and impacts of the Continuing Resolution, and status of the FY 2019 Budget for the Navigation Program; status of the Inland Waterways Trust Fund and project updates; continuing dissemination of navigation data via AIS, including the Lock Performance Monitoring System (LPMS); status of the construction activities for Olmsted Locks and Dam Project, the Locks and Dams 2, 3, and 4 on the Monongahela River Project, the Chickamauga Lock Project and the Kentucky Lock Project; update of the Upper Ohio River Navigation study; and update of the Brazos River Floodgates and Colorado River Locks Study and ''open channel'' option.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the November 3, 2017 meeting. The final version will be provided at the meeting. All materials will be posted to the Web site after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin at 7:15 a.m. on the day of the meeting. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to

include email address and daytime telephone number at registration. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access. Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact Mr. Pointon, the committee DFO, or Mr. Lichtman, the ADFO, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Mr. Pointon, the committee DFO, or Mr. Lichtman, the committee ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO or ADFO at least five (5) business days prior to the meeting so that they may be made available to the Board for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting. Please note that because the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three business (3) days in advance to the committee DFO or ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO and ADFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO and ADFO.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2017–20912 Filed 9–28–17; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of a Draft Integrated Feasibility Report (Feasibility Report/Environmental Impact Statement), Aliso Creek Mainstem Ecosystem Restoration Study, Orange County, California

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (Corps), in cooperation with Orange County Public Works, Orange County, CA announces the availability of a Draft Integrated Feasibility Report (Draft IFR) including Feasibility Report and Environmental Impact Statement (EIS) for the Aliso Creek Mainstem Ecosystem Restoration Study, Orange County, CA for review and comment. The study evaluates opportunities for restoring degraded aquatic and riparian ecosystem structure and function, riverine and floodplain system connectivity, stream channel stability and protection of critical public infrastructure, including both regional water supply and wastewater conveyance pipelines along the lower Aliso Creek Mainstem in Orange County, CA. A Notice of Intent to prepare the Draft EIS was published on April 9, 2009 in the **Federal Register** (74 FR 16188). A public scoping meeting was conducted on May 7, 2009 in the City of Mission Viejo, CA.

DATES: The Draft IFR is available for a 45-day review period pursuant to the National Environmental Policy Act (NEPA). Written comments pursuant to the NEPA will be accepted until the close of public review at close of business on November 13, 2017.

ADDRESSES: Questions or comments concerning the Draft IFR may be directed to: Ms. Deborah Lamb; U.S. Army Corps of Engineers; Los Angeles District; CESPL PDR–L; 915 Wilshire Boulevard; Los Angeles, CA 90017–3401 or *AlisoCreek@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Lamb, U.S. Army Corps of Engineers, Los Angeles District, phone number (213) 452–3798.

SUPPLEMENTARY INFORMATION: As part of the public involvement process, notice is hereby given by the Corps' Los Angeles District of a public review meeting on October 17, 2017, from 6:00 p.m. to 9:00 p.m. at the Laguna Hills Community Center and Sports Complex, Room-Heritage C. The address is 25555 Alicia Parkway, Laguna Hills, CA 92653. The public meeting will allow participants the opportunity to comment on the IFR. Attendance at the public hearing is not necessary to provide comments. Written comments may also be given to the contact listed under **ADDRESSES**.

The document is available online for review at: *http://www.spl.usace.army.mil/Missions/Civil-Works/Projects-Studies/Aliso-Creek-Study/.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2017–20910 Filed 9–28–17; 8:45 am]

BILLING CODE 3720–58–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Senior Executive Service Performance Review Board

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

SUMMARY: This notice announces the membership of the Defense Nuclear Facilities Safety Board (DNFSB) Senior Executive Service (SES) Performance Review Board (PRB).

DATES: September 29, 2017.

ADDRESSES: Send comments concerning this notice to: Defense Nuclear Facilities

Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Deborah Biscieglia by telephone at (202) 694–7041 or by email at *debbieb@dnfsb.gov.*

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314 (c)(1) through (5) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The PRB shall review and evaluate the initial summary rating of a senior executive's performance, the executive's response, and the higher level official's comments on the initial summary rating. In addition, the PRB will review and recommend executive performance bonuses and pay increases.

The DNFSB is a small, independent Federal agency; therefore, the members of the DNFSB SES Performance Review Board listed in this notice are drawn from the SES ranks of other agencies. The following persons comprise a standing roster to serve as members of the Defense Nuclear Facilities Safety Board SES Performance Review Board:

Christopher E. Aiello, Special Advisor to the Deputy to the Chairman and CFO, Federal Deposit Insurance Corporation

David M. Capozzi, Executive Director, United States Access Board

Cedric R. Hendricks, Associate Director for the Office of Legislative, Intergovernmental and Public Affairs, Court Services and Offender Supervision Agency

Nigel Q. Mote, Executive Director, U.S. Nuclear Waste Technical Review Board

Barry S. Socks, Chief Operating Officer, National Capital Planning Commission

Sean Sullivan,

Chairman.

[FR Doc. 2017–20884 Filed 9–28–17; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, October 18, 2017, 8:00 a.m.–5:00 p.m.; Thursday, October 19, 2017, 9:00 a.m.–12:00 p.m.

ADDRESSES: Red Lion, 1101 North Columbia Center Boulevard, Kennewick, Washington 99336.

FOR FURTHER INFORMATION CONTACT: David Borak, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Phone: (202) 586–9928.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda Topics:

Wednesday, October 18, 2017

- EM Program Update
- EM SSAB Chairs' Round Robin
- Update from the New Administration
- Budget and Planning Update
- Public Comment
- Board Business

Thursday, October 19, 2017

- DOE Headquarters News and Views
- Waste Disposition Update
- Public Comment
- Board Business

Public Participation: The EM SSAB Chairs welcome the attendance of the public at their advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Borak at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed either before or after the meeting with the Designated Federal Officer, David Borak, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact David Borak. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Borak at the address or phone number listed above. Minutes will also be available at the following Web site: *https://energy.gov/em/listings/chairs-meetings.*

Issued at Washington, DC, on September 22, 2017.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2017–20907 Filed 9–28–17; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2017–0438; FRL–9968–07–OECA]

Proposed Information Collection Request; Comment Request; Annual Public Water Systems Compliance Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Annual Public Water System Compliance Report'' (EPA ICR No. 1812.06, OMB Control No. 2020–0020) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through April 30, 2018. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 28, 2017.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2017–0438 online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Raquel Taveras, Monitoring, Assistance and Media Programs Division, Office of Compliance, MC–2227A, Environmental Protection Agency, 1200 Pennsylvania

Ave. NW., Washington, DC 20460; telephone number: (202) 564–9651; fax number: (202) 564–7083; email address: *taveras.raquel@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Section 1414(c)(3)(A) of the Safe Drinking Water Act (SDWA) requires that each state (a term that includes states, commonwealths, tribes and territories) that has primary enforcement authority under the SDWA shall prepare, make readily available to the public, and submit to the Administrator of EPA, an annual report of violations of national primary drinking water regulations in the state. These Annual State Public Water System Compliance Reports are to include violations of maximum contaminant levels, treatment requirements, variances and exemptions, and monitoring requirements determined to be significant by the Administrator after consultation with the states. To minimize a state's burden in preparing its annual statutorily-required report, EPA issued guidance that explains what Section 1414(c)(3)(A) requires and provides model language and reporting templates. EPA also annually makes available to the states a computer query that generates for each state (from information states are already separately required to submit to EPA's national database on a quarterly basis) the required violations information in a table consistent with the reporting template in EPA's guidance.

Form numbers: None.

Respondents/affected entities: Entities that are potentially affected by this action are States that have primacy enforcement authority and meet the definition of ''state'' under the SDWA.

Respondent's obligation to respond: Mandatory section 1414 (c)(3)(A) of SDWA.

Estimated number of respondents: 55 (total).

Frequency of response: Annually.

Total estimated burden: 4,400 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $232,303 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is no change of hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This universe of respondents remains the same.

Dated: September 8, 2017.

Edward J. Messina,

Director, Monitoring, Assistance and Media Programs.

[FR Doc. 2017–20434 Filed 9–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9968–18–OP]

EPA Smart Sectors Program Launch

Correction

In Notice document 2017–20310, appearing on page 44783 in the issue of Tuesday, September 26, 2017, make the following correction:

On page 44783, in the second column, in the **SUPPLEMENTARY INFORMATION** section, under ''General Information'', the first paragraph should read as follows:

EPA has initially identified the following sectors to work with: Aerospace; agriculture; automotive; cement and concrete; chemical manufacturing; construction; electronics and technology; forestry and paper products; iron and steel; mining; oil and gas; ports and marine; and utilities and power generation. Sectors were selected based on each sector's potential to improve the environment and public health. EPA welcomes participation from other stakeholders.

[FR Doc. C1–2017–20310 Filed 9–28–17; 8:45 am]

BILLING CODE 1301–00–D

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9035–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements (EIS)
Filed 09/18/2017 Through 09/22/2017
Pursuant to 40 CFR 1506.9

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20170184, Final, FRA, GA, Atlanta-Chattanooga High Speed Ground Transportation Project, Review Period Ends: 10/29/2017, Contact: John Winkle 202–493–6067

EIS No. 20170185, Final, DOC, AL, Nationwide Public Safety Broadband Network for the Southern United States, Review Period Ends: 10/29/2017, Contact: Amanda Pereira 571–665–6042

EIS No. 20170186, Draft, FHWA, UT, I–15, Payson Main Street Interchange, Comment Period Ends: 11/13/2017, Contact: Justin Schellenberg 801–965–4000

EIS No. 20170187, Draft, USACE, CA, Aliso Creek Mainstem Ecosystem Restoration Study, Comment Period Ends: 11/13/2017, Contact: Deborah Lamb (213) 452–3798

EIS No. 20170188, Draft, USFS, CO, Rio Grande Forest Plan Revision, Comment Period Ends: 12/28/2017, Contact: Erin Minks 719–852–6215

EIS No. 20170189, Final Supplement, BOP, KY, Proposed U.S. Penitentiary and Federal Prison Camp, Letcher County, KY, Review Period Ends: 10/29/2017, Contact: Issac Gaston 202–514–6470

Amended Notices

EIS No. 20170135, Draft, NPS, WA, Olympic National Park Draft Mountain Goat Management Plan, Comment Period Ends: 09/26/2017, Contact: Christina Miller 360–565–3004

Revision to FR Notice Published 07/28/2017; Extending Comment Period from 09/26/2017 to 10/10/2017.

Dated: September 26, 2017.

Kelly Knight,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2017–20938 Filed 9–28–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:39 a.m. on Wednesday, September 27, 2017, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Richard Cordray (Director, Consumer Financial Protection Bureau), concurred in by Director Keith A. Noreika (Acting Comptroller of the Currency), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

Dated: September 27, 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–21063 Filed 9–27–17; 4:15 pm]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors met in open session at 10:02 a.m. on Wednesday, September 27, 2017, to consider the following matters:

Summary Agenda:

Disposition of minutes of previous Board of Directors' Meetings.

Memorandum and resolution re: Final Rule Establishing Restrictions on Qualified Financial Contracts of Certain FDIC supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions.

Memorandum and resolution re: Designated Reserve Ratio for 2018.

Summary reports, status reports, reports of actions taken pursuant to authority delegated by the Board of Directors, and reports of the Office of Inspector General.

Discussion Agenda:

Update of Projected Deposit Insurance Fund Losses, Income, and Reserve Ratios for the Restoration Plan.

Memorandum and resolution re: Regulatory Capital Rule: Simplification to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Richard Cordray (Director, Consumer Financial Protection Bureau), concurred in by Director Keith A. Noreika (Acting Comptroller of the Currency), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting than that previously provided on September 25, 2017, was practicable.

The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: September 27, 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–21062 Filed 9–27–17; 4:15 pm]

BILLING CODE P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

September 27, 2017.

TIME AND DATE: 10:00 a.m., Thursday, October 12, 2017.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Kentucky Fuel Corporation,* Docket No. KENT 2015–383. (Issues include whether the Judge erred in finding high negligence with respect to a violation for inadequate training of a miner.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1–(866) 867–4769, Passcode: 678–100.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2017–21056 Filed 9–27–17; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of

the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 26, 2017.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Atlantic Community Bancshares, Inc.,* Camp Hill, Pennsylvania; to merge with BBN Financial Corporation, and thereby indirectly acquire Bankers' Bank Northeast, both in Glastonbury, Connecticut.

B. Federal Reserve Bank of Atlanta (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *CenterState Bank Corporation,* Winter Haven, Florida; to merge with HCBF Holding Company, Inc., and thereby indirectly acquire Harbor Community Bank, both in Fort Pierce, Florida.

Board of Governors of the Federal Reserve System, September 26, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–20928 Filed 9–28–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 16, 2017.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Donald J. Leeper and the Ruthanne C. Leeper Irrevocable Trust,* both of Cartersville, Georgia; to retain voting shares of NorthSide Bancshares, Inc., and thereby indirectly retain voting shares of NorthSide Bank, both in Adairsville, Georgia.

Board of Governors of the Federal Reserve System, September 26, 2017.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2017–20929 Filed 9–28–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Senior Executive Service Performance Review Board

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Board for the Federal Retirement Thrift Investment Board. The purpose of the Performance Review Board is to make written recommendations on each executive's annual summary ratings, performance-based pay adjustment, and performance awards to the appointing authority.

DATES: This notice is applicable September 29, 2017.

FOR FURTHER INFORMATION CONTACT: Kelly Powell, HR Specialist, at 202–942–1681.

SUPPLEMENTARY INFORMATION: Title 5, U.S. Code, 4314(c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before Board service commences. The following persons will serve on the Federal Retirement Thrift Investment Board's Performance Review Board which will review initial summary ratings to ensure the ratings are consistent with established performance requirements, reflect meaningful distinctions among senior executives based on their relative performance and organizational results and provide recommendations for ratings, awards, and pay adjustments in a fair and equitable manner: Susan Crowder, Gisile Goethe, Renee Wilder Guerin, and Kim Weaver.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2017–20871 Filed 9–28–17; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2017–0089]

Proposed Centers for Disease Control and Prevention Guideline on the Diagnosis and Management of Pediatric Mild Traumatic Brain Injury

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Availability; request for comment.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces the opening of a docket to obtain public comment on two documents; a Systematic Review of the evidence on the diagnosis, prognosis, and management of pediatric mild traumatic brain injury (TBI), and an evidence-based Guideline that offers clinical recommendations for healthcare providers. Public comments will be considered and will inform revisions to the systematic review and guideline.

DATES: Written comments must be received on or before November 28, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2017–0089, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, Attn: Docket No. CDC–2017–0089, 4770 Buford Highway NE., Mailstop F–63, Atlanta, Georgia 30341.

Instructions: All submissions received must include the agency name and docket number or RIN. All relevant public comments received will be posted without change to *http://*

www.regulations.gov, including any personal or proprietary information provided. To download an electronic version of the Guideline and appendices, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Arlene Greenspan, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE., Mailstop F–63, Atlanta, Georgia 30341; Telephone: (770) 488–4696.

SUPPLEMENTARY INFORMATION: The Pediatric Mild Traumatic Brain Injury Workgroup, a workgroup of the National Center for Injury Prevention and Control (NCIPC) Board of Scientific Counselors (BSC), conducted a systematic review of the evidence and drafted the clinical recommendations. The NCIPC/BSC is a federal advisory committee comprised of leading experts in the field of injury and violence prevention that makes recommendations to the HHS Secretary, the CDC Director, and the NCIPC Director. The workgroup consists of subject matter experts in neurosurgery, pediatrics, emergency medicine, nursing, neurology, rehabilitation, neuroimaging, internal and family medicine, sports medicine, and school health. The systematic review and clinical recommendations drafted by the Pediatric Mild Traumatic Brain Injury Workgroup served as the primary foundation for the CDC Systematic Review and CDC Guideline.

Supporting and Related Material in the Docket

The docket contains the following supporting and related materials to help inform public comment: the Systematic Review including data tables, and the Guideline including the key recommendations. The document, *Diagnosis and Management of Mild Traumatic Brain Injury Among Children: A Systematic Review,* summarizes findings from 25 years of research on the diagnosis, prognosis, and management of pediatric mild TBI. In this review, evidence is summarized for six clinical questions using a rigorous evidence rating methodology. The draft *CDC Guideline on the Diagnosis and Management of Mild Traumatic Brain Injury Among Children* focuses on diagnosis and management of acute mild traumatic brain injury (TBI) among children and adolescents (age 18 and under). The Guideline is designed for use by acute care and primary care providers who diagnose and manage patients with mild TBI resulting from both unintentional and intentional injuries. The recommendations contained in the Guideline were developed based on findings from the Systematic Review. This Guideline is not a federal rule or regulation; adherence to the Guideline will be voluntary.

Dated: September 26, 2017.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2017–20903 Filed 9–28–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–10224, CMS–222–17, CMS–216–94, and CMS–265–11]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by October 30, 2017.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *Or*, Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Healthcare Common Procedure Coding System (HCPCS)—Level II Code Modification Request Process; *Use:* In October 2003, the Secretary of Health and Human Services (HHS) delegated authority under the Health Insurance Portability and Accountability Act (HIPAA) legislation to Centers for Medicare and Medicaid Services (CMS) to maintain and distribute HCPCS Level II Codes. As stated in 42 CFR Sec. 414.40(a) CMS establishes uniform national definitions of services, codes to represent services, and payment modifiers to the codes. The HCPCS codeset has been

maintained and distributed via modifications of codes, modifiers and descriptions, as a direct result of data received from applicants. Thus, information collected in the application is significant to codeset maintenance.

The HCPCS codeset maintenance is an ongoing process, as changes are implemented and updated annually; therefore, the process requires continual collection of information from applicants on an annual basis. As new technology evolves and new devices, drugs and supplies are introduced to the market, applicants submit applications to CMS requesting modifications to the HCPCS Level II codeset. Applications have been received prior to HIPAA implementation and must continue to be collected to ensure quality decision-making. The HIPAA of 1996 required CMS to adopt standards for coding systems that are used for reporting health care transactions. The regulation that CMS published on August 17, 2000 (45 CFR 162.10002) to implement the HIPAA requirement for standardized coding systems established the HCPCS Level II codes as the standardized coding system for describing and identifying health care equipment and supplies in health care transactions. HCPCS Level II was selected as the standardized coding system because of its wide acceptance among both public and private insurers. Public and private insurers were required to be in compliance with the August 2000 regulation by October 1, 2002. *Form Number:* CMS–10224 (OMB control number: 0938–1042); *Frequency:* Annually; *Affected Public:* Private Sector: Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 100; *Total Annual Responses:* 100; *Total Annual Hours:* 1100. (For policy questions regarding this collection contact Kimberley Combs-Miller at 410–786–6707).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Independent Rural Health Clinics/Freestanding Federally Qualified Health Clinics Cost Report; *Use:* Providers of services participating in the Medicare program are required under sections 1815(a), 1833(e) and 1861(v)(1)(A) of the Social Security Act (42 U.S.C. 1395g) to submit annual information to achieve settlement of costs for health care services rendered to Medicare beneficiaries. In addition, regulations at 42 CFR 413.20 and 413.24 require adequate cost data and cost reports from providers on an annual basis. The Form CMS–222–17 cost report is needed to determine a provider's reasonable costs incurred in furnishing medical services to Medicare beneficiaries and reimbursement due to or from a provider. *Form Number:* CMS–222–17 (OMB control number: 0938–0107); *Frequency:* Annually; *Affected Public:* Private Sector: Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 1,744; *Total Annual Responses:* 1,744; *Total Annual Hours:* 95,920. (For policy questions regarding this collection contact Yaakov Feinstein at 410–786–3137).

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization/Histocompatibility Laboratory Cost Report; *Use:* Providers of services participating in the Medicare program are required under sections 1815(a) and 1861(v)(1)(A) of the Social Security Act (42 U.S.C. 1395g) to submit annual information to achieve settlement of costs for health care services rendered to Medicare beneficiaries. In addition, regulations at 42 CFR 413.20 and 413.24 require adequate cost data and cost reports from providers on an annual basis. The Form CMS–216–94 cost report is needed to determine a provider's reasonable costs incurred in furnishing medical services to Medicare beneficiaries and reimbursement due to or due from a provider. *Form Number:* CMS–216–94 (OMB control number: 0938–0102); *Frequency:* Annually; *Affected Public:* Private Sector: Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 102; *Total Annual Responses:* 102; *Total Annual Hours:* 4590. (For policy questions regarding this collection contact Amelia Citerone at 410–786–3901).

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Providers of services participating in the Medicare program are required under sections 1815(a) and 1861(v)(1)(A) of the Social Security Act (42 U.S.C. 1395g) to submit annual information to achieve settlement of costs for health care services rendered to Medicare beneficiaries. In addition, regulations at 42 CFR 413.20 and 413.24 require adequate cost data and cost reports from providers on an annual basis. The Form CMS–265–11 cost report is needed to determine a provider's reasonable costs incurred in furnishing medical services to Medicare beneficiaries. *Form Number:* CMS–265–11 (OMB control number: 0938–0236); *Frequency:* Annually; *Affected Public:* Private Sector: Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 6,821; *Total Annual Responses:* 6,821; *Total Annual Hours:* 443,365. (For policy questions regarding this collection contact Gail Duncan at 410–786–7278).

Dated: September 26, 2017.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017–20921 Filed 9–28–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1698–N]

Medicare Program; Request for Nominations to the Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests

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

ACTION: Notice.

SUMMARY: This notice requests nominations to fill vacancies on the Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests (the Panel). The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services (DHHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on issues related to clinical diagnostic laboratory tests (CDLTs). As announced in the notice published in the **Federal Register** on June 16, 2017, entitled ''Medicare Program; Rechartering, Membership, and Announcement of the Advisory Panel on Clinical Diagnostic Laboratory Tests Meeting on August 1, 2017'' (82 FR 27705), the Secretary approved the rechartering of the Panel on April 25, 2017 for a 2-year period effective through April 25, 2019.

DATES: The agency will receive nominations on a continuous basis.

ADDRESSES: All nominations should be sent electronically to the following email address: *CDLTPanel@cms.hhs.gov.*

Web site: For additional information on the Panel and updates to the Panel's activities, we refer readers to our Web site at *http://cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html.*

FOR FURTHER INFORMATION CONTACT: Persons wishing to nominate individuals to serve on the Panel or to

obtain further information may submit an email to the following email address: *CDLTPanel@cms.hhs.gov*.

News Media: Representatives should contact the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Advisory Panel on Clinical Diagnostic Laboratory Tests is authorized by section 1834A(f)(1) of the Social Security Act (the Act) (42 U.S.C. 1395m–1), as established by section 216(a) of the Protecting Access to Medicare Act of 2014 (Pub. L. 113–93, enacted on April 1, 2014) (PAMA). The Panel is subject to the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory panels.

Section 1834A(f)(1) of the Act directs the Secretary of the Department of Health and Human Services (the Secretary) to consult with an expert outside advisory panel established by the Secretary, composed of an appropriate selection of individuals with expertise in issues related to clinical diagnostic laboratory tests. Such individuals may include molecular pathologists, researchers, and individuals with expertise in laboratory science or health economics.

The Panel will provide input and recommendations to the Secretary and the Administrator of CMS, on the following:

- The establishment of payment rates under section 1834A of the Act for new clinical diagnostic laboratory tests, including whether to use crosswalking or gapfilling processes to determine payment for a specific new test; and
- The factors used in determining coverage and payment processes for new clinical diagnostic laboratory tests.
- Other aspects of the new payment system under section 1834A of the Act.

A notice announcing the establishment of the Panel and soliciting nominations for members was published in the October 27, 2014 **Federal Register** (79 FR 63919 through 63920). In the August 7, 2015 **Federal Register** (80 FR 47491), we announced membership appointments to the Panel along with the first public meeting date for the Panel, which was held on August 26, 2015. Subsequent meetings of the Panel were also announced in the **Federal Register**. As previously noted, the Secretary approved the rechartering of the Panel on April 25, 2017, for a 2-year period effective through April 25, 2019.

The Panel charter provides that Panel meetings will be held up to 4 times annually and the Panel Chair will serve for a period of 3 years, which may be extended at the discretion of the Administrator or his or her duly appointed designee. Additionally, the Panel Chair facilitates the meeting and the Designated Federal Official (DFO) or DFO's designee must be present at all meetings.

II. Request for Nominations; Criteria for Nominees

We are requesting nominations for members to serve on the Panel. The Panel shall consist of up to 15 individuals with expertise in issues related to clinical diagnostic laboratory tests, which may include molecular pathologists, laboratory researchers, and individuals with expertise in laboratory science or health economics, with regard to issues related to the development, validation, performance, safety, and application of such tests.

Panel members serve on a voluntary basis, without compensation, according to an advance written agreement; however, for the meetings, we reimburse travel, meals, lodging, and related expenses in accordance with standard Government travel regulations.

Nominees must demonstrate personal experience with clinical diagnostic laboratory tests and services through a past or present history of direct employment with an organization that furnishes clinical diagnostic laboratory tests. (For purposes of this Panel, consultants or independent contractors shall not be representatives of clinical laboratories.)

We have special interest in ensuring, while taking into account the nominee pool, that the Panel membership is balanced under the FACA guidelines; therefore nominees will be evaluated based on expertise and factors needed to keep the balance of the Panel. These factors include, but are not limited to, geographic locations within the United States or territories; race; ethnicity; sex; disability; points of view; and area of expertise (for example, medical, scientific, financial, technical, administrative). Additionally, all nominees must have at least 5 years of experience with clinical diagnostic laboratory tests or genetic testing.

Based upon either self-nominations or nominations submitted by interested organizations, the Secretary, the CMS Administrator, or the Secretary's or CMS Administrator's designee, appoints new members to the Panel from among candidates determined to have the required expertise. Nominations will be considered as vacancies occur on the Panel. Nominations should be updated and resubmitted every 3 years to continue to be considered for Panel vacancies. New appointments are made in manner that ensures a balanced membership under FACA guidelines. Our appointment schedule will assure that we have the full complement of members for each Panel meeting.

It is not necessary for a nominee to possess expertise in all of the areas listed, but each must have a minimum of 5 years of experience and currently have full-time employment in his or her area of expertise. Generally, members of the Panel serve overlapping terms up to 3 years, based on the needs of the Panel and contingent upon the rechartering of the Panel. A member may serve after the expiration of his or her term until a successor has been sworn in. Any member appointed to fill a vacancy for an unexpired term will be appointed for the remainder of that term.

Any interested person or organization may nominate one or more qualified individuals. Self-nominations will also be accepted. Each nomination must include the following:

- Letter of Nomination stating the reason why the nominee should be considered.
- Curriculum vitae or resume of the nominee that includes the following:

++ Email address where the nominee can be contacted.

++ Title and current position.

++ Professional affiliation.

++ Home and business address.

++ Home and business telephone and or fax numbers.

++ List of areas of expertise.

- Written and signed statement from the nominee indicating that the nominee is willing to serve on the Panel under the conditions described in this notice and further specified in the Charter.
- Brief (1 page; double-spaced) biographical summary of the nominee's experience.

The top nominees will be contacted for interest and availability. Phone interviews of nominees may also be requested after review of the nominations. The Secretary, the CMS Administrator, or the Secretary's or CMS Administrator's designee will make the final decision about who will serve on the committee. Formal letters of invitation to serve on the Panel will be extended by the CMS Administrator.

To permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts.

III. Copies of the Charter

To obtain a copy of the Panel's Charter, we refer readers to our Web site at *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html.*

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Dated: September 22, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2017–20923 Filed 9–28–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4181–N]

Medicare Program; Medicare Appeals; Adjustment to the Amount in Controversy Threshold Amounts for Calendar Year 2018

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

ACTION: Notice.

SUMMARY: This notice announces the annual adjustment in the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearings and judicial review under the Medicare appeals process. The adjustment to the AIC threshold amounts will be effective for requests for ALJ hearings and judicial review filed on or after January 1, 2018. The calendar year 2018 AIC threshold amounts are $160 for ALJ hearings and $1,600 for judicial review.

DATES: This notice is applicable on January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Liz Hosna (*Katherine.Hosna@cms.hhs.gov*), (410) 786–4993.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1869(b)(1)(E) of the Social Security Act (the Act), as amended by section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), established the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearings and judicial review at $100 and $1,000, respectively, for Medicare Part A and Part B appeals. Section 940 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), amended section 1869(b)(1)(E) of the Act to require the AIC threshold amounts for ALJ hearings and judicial review to be adjusted annually. The AIC threshold amounts are to be adjusted, as of January 2005, by the percentage increase in the medical care component of the consumer price index (CPI) for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of $10. Section 940(b)(2) of the MMA provided conforming amendments to apply the AIC adjustment requirement to Medicare Part C/Medicare Advantage (MA) appeals and certain health maintenance organization and competitive health plan appeals. Health care prepayment plans are also subject to MA appeals rules, including the AIC adjustment requirement. Section 101 of the MMA provides for the application of the AIC adjustment requirement to Medicare Part D appeals.

A. Medicare Part A and Part B Appeals

The statutory formula for the annual adjustment to the AIC threshold amounts for ALJ hearings and judicial review of Medicare Part A and Part B appeals, set forth at section 1869(b)(1)(E) of the Act, is included in the applicable implementing regulations, 42 CFR 405.1006(b) and (c). The regulations require the Secretary of the Department of Health and Human Services (the Secretary) to publish changes to the AIC threshold amounts in the **Federal Register** (§ 405.1006(b)(2)). In order to be entitled to a hearing before an ALJ, a party to a proceeding must meet the AIC requirements at § 405.1006(b). Similarly, a party must meet the AIC requirements at § 405.1006(c) at the time judicial review is requested for the court to have jurisdiction over the appeal (§ 405.1136(a)).

B. Medicare Part C/MA Appeals

Section 940(b)(2) of the MMA applies the AIC adjustment requirement to Medicare Part C appeals by amending section 1852(g)(5) of the Act. The implementing regulations for Medicare Part C appeals are found at 42 CFR 422, subpart M. Specifically, §§ 422.600 and 422.612 discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 422.600 grants any party to the reconsideration, except the MA organization, who is dissatisfied with the reconsideration determination, a right to an ALJ hearing as long as the amount remaining in controversy after reconsideration meets the threshold requirement established annually by the Secretary. Section 422.612 states, in part, that any party, including the MA organization, may request judicial review if the AIC meets the threshold requirement established annually by the Secretary.

C. Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans

Section 1876(c)(5)(B) of the Act states that the annual adjustment to the AIC dollar amounts set forth in section 1869(b)(1)(E)(iii) of the Act applies to certain beneficiary appeals within the context of health maintenance organizations and competitive medical plans. The applicable implementing regulations for Medicare Part C appeals are set forth in 42 CFR 422, subpart M and apply to these appeals pursuant to 42 CFR 417.600(b). The Medicare Part C appeals rules also apply to health care prepayment plan appeals pursuant to 42 CFR 417.840.

D. Medicare Part D (Prescription Drug Plan) Appeals

The annually adjusted AIC threshold amounts for ALJ hearings and judicial review that apply to Medicare Parts A, B, and C appeals also apply to Medicare Part D appeals. Section 101 of the MMA added section 1860D–4(h)(1) of the Act regarding Part D appeals. This statutory provision requires a prescription drug plan sponsor to meet the requirements set forth in sections 1852(g)(4) and (g)(5) of the Act, in a similar manner as MA organizations. As noted previously, the annually adjusted AIC threshold requirement was added to section 1852(g)(5) of the Act by section 940(b)(2)(A) of the MMA. The implementing regulations for Medicare Part D appeals can be found at 42 CFR 423, subparts M and U. The regulations at § 423.562(c) prescribe that, unless the Part D appeals rules provide otherwise, the Part C appeals rules (including the annually adjusted AIC threshold amount) apply to Part D appeals to the extent they are appropriate. More specifically, §§ 423.1970 and 423.1976 of the Part D appeals rules discuss the AIC threshold amounts for ALJ hearings and judicial review.

Section 423.1970(a) grants a Part D enrollee, who is dissatisfied with the independent review entity (IRE)

reconsideration determination, a right to an ALJ hearing if the amount remaining in controversy after the IRE reconsideration meets the threshold amount established annually by the Secretary. Sections 423.1976(a) and (b) allow a Part D enrollee to request judicial review of an ALJ or Medicare Appeals Council decision if, in part, the AIC meets the threshold amount established annually by the Secretary.

II. Provisions of the Notice—Annual AIC Adjustments

A. AIC Adjustment Formula and AIC Adjustments

As previously noted, section 940 of the MMA requires that the AIC threshold amounts be adjusted annually, beginning in January 2005, by the percentage increase in the medical care component of the CPI for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of $10.

B. Calendar Year 2018

The AIC threshold amount for ALJ hearings will remain at $160 and the AIC threshold amount for judicial review will rise to $1,600 for CY 2018. These amounts are based on the 59.989 percent increase in the medical care component of the CPI, which was at 297.600 in July 2003 and rose to 476.130 in July 2017. The AIC threshold amount for ALJ hearings changes to $159.99 based on the 59.989 percent increase over the initial threshold amount of $100 established in 2003. In accordance with section 1869(b)(1)(E)(iii) of the Act, the adjusted threshold amounts are rounded to the nearest multiple of $10. Therefore, the CY 2018 AIC threshold amount for ALJ hearings is $160.00. The AIC threshold amount for judicial review changes to $1,599.89 based on the 59.989 percent increase over the initial threshold amount of $1,000. This amount was rounded to the nearest multiple of $10, resulting in the CY 2018 AIC threshold amount of $1,600.00 for judicial review.

C. Summary Table of Adjustments in the AIC Threshold Amounts

In the following table we list the CYs 2014 through 2018 threshold amounts.

	CY 2014	CY 2015	CY 2016	CY 2017	CY 2018
ALJ Hearing	$140	$150	$150	$160	$160
Judicial Review	1,430	1,460	1,500	1,560	1,600

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: September 12, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2017–20883 Filed 9–28–17; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–2165]

Oncology Pharmaceuticals: Reproductive Toxicity Testing and Labeling Recommendations; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Oncology Pharmaceuticals: Reproductive Toxicity Testing and Labeling Recommendations.'' The purpose of this guidance is to assist sponsors in reproductive toxicity assessments (mainly of embryo-fetal development) for oncology pharmaceuticals and to provide recommendations for product labeling on duration of contraception following cessation of therapy to minimize potential risk to a developing embryo/fetus. The guidance also clarifies FDA's current thinking on when nonclinical studies for reproductive toxicology assessment may not be needed (*e.g.,* for pharmaceuticals intended for use in postmenopausal women only). The intended outcome of this guidance is to provide for more consistent labeling for oncology pharmaceuticals and to reduce the conduct of nonclinical studies that are not informative on product use.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 28, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov/.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov/* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov/.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–

2017–D–2165 for ''Oncology Pharmaceuticals: Reproductive Toxicity Testing and Labeling Recommendations; Draft Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov/* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov/.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov/* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: John Leighton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2204, Silver Spring, MD 20993–0002, 301–796–0750; or Haleh Saber, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2117, Silver Spring, MD 20993–0002, 301–796–0750.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Oncology Pharmaceuticals: Reproductive Toxicity Testing and Labeling Recommendations.'' This guidance presents FDA's current approach to assessing potential risks to embryo-fetal development associated with oncology pharmaceutical use in male and female patients. The term *pharmaceutical* in this guidance refers to small molecules, therapeutic proteins, antibodies, and related products such as conjugated products. The guidance describes when embryo-fetal developmental studies for oncology pharmaceuticals may be warranted for different types of pharmaceuticals, such as cytotoxic, biological, and conjugated pharmaceuticals, or pharmaceuticals used in combinations. The guidance also discusses other aspects of a nonclinical reproductive toxicity evaluation, such as fertility and pre- and postnatal evaluation. The guidance addresses the need for a reproductive toxicity evaluation when pharmaceuticals are used in specific populations (*e.g.,* pediatric, males-only, or postmenopausal women).

Although current regulatory guidances exist regarding the need to assess the embryo-fetal developmental toxicity potential of pharmaceuticals and the overall design of the studies, this guidance provides additional recommendations on specific types of products and for specific populations, which are not covered under other guidances. In addition, this guidance provides recommendations on the use of contraception and the duration of its use to minimize the potential risks associated with the use of oncology pharmaceuticals.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on reproductive toxicity testing and labeling recommendations for oncology pharmaceuticals. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This is not a significant regulatory action subject to Executive Order 12866.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively. The collections of information in 21 CFR 201.56, 201.57, and the final rule ''Content and Format of Labeling for Human Prescription Drug and Biological Products; Requirements for Pregnancy and Lactation Labeling'' have been approved under OMB control numbers 0910–0572 and 0910–0624.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov/.*

Dated: September 22, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–20906 Filed 9–28–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–4644]

Advancement of Emerging Technology Applications for Pharmaceutical Innovation and Modernization; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled ''Advancement of Emerging Technology Applications for Pharmaceutical Innovation and Modernization.'' This guidance finalizes the draft guidance

issued December 23, 2015, which provides recommendations to pharmaceutical companies interested in participating in a program involving the submission of emerging manufacturing technology. The program is open to companies that intend to include the technology as part of a regulatory submission including an investigational new drug application (IND), original or supplemental new drug application (NDA), abbreviated new drug application (ANDA) or biologic license application (BLA), or application-associated Drug Master File (DMF) reviewed by the Center for Drug Evaluation and Research (CDER), and where that technology meets other criteria described in this guidance.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–D–4644 for ''Advancement of Emerging Technology Applications for Pharmaceutical Innovation and Modernization.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Sau L. Lee, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 22, Rm. 2128, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 240–506–9136; or for further information or to submit requests to participate in the program, please use *CDER-ETT@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Advancement of Emerging Technology Applications for Pharmaceutical Innovation and Modernization.'' FDA is committed to supporting and enabling pharmaceutical innovation and modernization as part of the Agency's mission to protect and promote the public health. While the implementation of emerging technology is critical to advancing product design, modernizing pharmaceutical manufacturing, and improving quality, FDA also recognizes that the adoption of innovative approaches may represent challenges to industry and the Agency.

Issues in pharmaceutical manufacturing have the potential to significantly impact patient care as failures in quality may result in product recalls and harm to patients. Additionally, product failures or facility, equipment, or manufacturing problems are a major factor leading to disruptions in drug supply. Modernizing manufacturing technology may lead to a more robust manufacturing process with fewer interruptions in production, fewer product failures (before or after distribution), and greater assurance that the drug products manufactured in any given period of time will provide the expected clinical performance. Encouraging development of emerging technology may lead to pharmaceutical innovation and modernization, such as a more robust drug product design and improved manufacturing with better process control, thereby leading to improved product quality and availability throughout a product's lifecycle.

In this program, pharmaceutical companies can, prior to the regulatory submission, submit questions and proposals about the use of specific emerging technology to a group within

the FDA Emerging Technology Team (ETT), which includes relevant representation from all FDA pharmaceutical quality functions. The ETT works in partnership with relevant pharmaceutical quality offices and assumes a leadership or co-leadership role for the cross-functional quality assessment team (including review and on-site facility evaluation or inspection) for submissions involving emerging technology.

This guidance finalizes the draft guidance issued December 23, 2015 (80 FR 79907). It provides further clarification on the criteria that the proposed technology needs to meet for its acceptance into the Emerging Technology Program. It also clarifies types of novel technology (*e.g.,* product technology, manufacturing process, and control strategy) that can be covered by the program.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on advancement of emerging technology applications for pharmaceutical innovation and modernization. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The information to be included in a meeting request for a product submitted in an IND, BLA, or NDA is approved by OMB control number 0910–0429 (''Guidance for Industry on Formal Meetings Between the FDA and Sponsors or Applicants''). Information to be included in a meeting request for a product submitted in an ANDA is approved by OMB control number 0910–0797 (''Guidance on Controlled Correspondence Related to Generic Drug Development''). The submission of INDs under 21 CFR 312.23 is approved by OMB control number 0910–0014; the submission of BLAs under 21 CFR 601.2 and 601.12 is approved by OMB control number 0910–0338; and the submission of NDAs and ANDAs under 21 CFR 314.50, 314.70, 314.71, 314.94, and 314.97 is approved by OMB control number 0910–0001.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: September 22, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–20861 Filed 9–28–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–5315]

Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Antimicrobial Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on November 16, 2017, from 8:30 a.m. to 4 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2017–N–5315. The docket will close on November 15, 2017. Submit either electronic or written comments on this public meeting by November 15, 2017. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 15, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of November 15, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before November 1, 2017, will be provided to the committee. Comments received after that date will be taken into consideration by FDA.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–5315 for ''Antimicrobial Drugs

Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lauren D. Tesh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *AMDAC@fda.hhs.gov,* or the FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's Web site at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss new drug application (NDA) 209367, ciprofloxacin inhalation powder, sponsored by Bayer HealthCare Pharmaceuticals, Inc., for the proposed indication of reduction of exacerbations in non-cystic fibrosis bronchiectasis (NCFB) adult patients (≥18 years of age) with respiratory bacterial pathogens.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before November 1, 2017, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 24, 2017. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 25, 2017.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require special accommodations due to a disability, please contact Lauren D. Tesh at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 26, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–20949 Filed 9–28–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–5608]

Opioid Policy Steering Committee; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is establishing a public docket to solicit suggestions, recommendations, and comments from interested parties, including patients and patient representatives, health care professionals, academic institutions, regulated industry, and other interested organizations, on questions relevant to FDA's newly established Opioid Policy Steering Committee (OPSC). Opioid addiction and the resulting overdoses and deaths have created a national crisis, which requires action by federal agencies that may in some instances be unprecedented in order to address the situation and attempt to turn the tide on the crisis. As a public health agency

responding to the crisis, FDA seek public input as it considers how its authorities can or should be used to address this crisis. This information will help the Agency understand areas of focus important to the public and identify and address opioid product and policy issues that need clarification. FDA is especially interested in hearing from interested parties in three key areas: What more can FDA do to ensure that the full range of available information, including about possible public health effects, is considered when making opioid-related regulatory decisions; what steps can FDA take with respect to dispensing and packaging (*e.g.,* unit of use) to facilitate consistency of and promote appropriate prescribing practice; and should FDA require some form of mandatory education for health care professionals who prescribe opioid drug products, and if so, how should such a system be implemented?

DATES: Submit either electronic or written comments by December 28, 2017.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 28, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of December 28, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–5608 for ''Opioid Policy Steering Committee; Establishment of a Public Docket; Request for Comments.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kathleen Davies, Office of Medical Products and Tobacco, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 2310, Silver Spring, MD 20993, 301–796–2205.

SUPPLEMENTARY INFORMATION: On April 19, 2017, the Secretary of Health and Human Services announced the HHS strategy for fighting the opioid crisis. The five point strategy includes: (1) Improving access to prevention, treatment, and recovery services; (2) targeting availability and distribution of overdose-reversing drugs; (3) strengthening timely public health data and reporting; (4) supporting cutting-edge research; and (5) advancing the practice of pain management. Following that announcement, on May 23, 2017, the Commissioner of Food and Drugs announced his intention to take more forceful steps to combat the opioid crisis. An OPSC was established to explore and develop additional tools or strategies FDA can use to confront this crisis. The OPSC has a broad mandate to consider steps that FDA can take to confront the opioid crisis. FDA is seeking suggestions, recommendations, and comments from interested parties, including patients and patient representatives, health care professionals, academic institutions, regulated industry, and other interested organizations, with regard to a number of topics related to three overarching questions: (1) What more can or should FDA do to ensure that the full range of available information, including about possible public health effects, is considered when making opioid-related regulatory decisions; (2) what steps can or should FDA take with respect to dispensing and packaging (*e.g.,* unit of use) to facilitate consistency of and promote appropriate prescribing practice; and (3) should FDA require some form of mandatory education for health care professionals who prescribe opioid drug products, and if so, how should such a system be implemented?

I. Assessing Benefit and Risk in the Opioids Setting

In a July 6, 2017, article in the *Journal of the American Medical Association,* FDA explained its approach to assessing the benefits and risks of drug products, describing a structured approach that, in the case of opioids, includes extensive additional review of the risks related to the potential misuse and abuse of these products. FDA explained that it is working to incorporate the effects of decisions on public health into its benefit-risk framework in a more quantitative manner that can supplement and enhance the strong qualitative work that the Agency already performs (Ref. 1). In addition, in March 2016, FDA commissioned a study from the National Academies of Sciences, Engineering, and Medicine to outline the state of the science regarding prescription opioid abuse and misuse, the evolving role that opioid analgesics play in pain management, and additional actions FDA should consider to address the opioid crisis with particular emphasis on strengthening its benefit-risk framework for opioids. That report was issued in July (Ref. 2). While FDA considers the report recommendations, we would like to solicit additional feedback that will supplement those recommendations.

Specific questions on which FDA seeks comment relating to this topic are as follows:

1. How should FDA tailor, or otherwise amend, its assessment of benefit and risk in the context of opioid drugs to ensure that the Agency is giving adequate consideration to the risks associated with the labeled indication of these drugs and the risks associated with the potential abuse and misuse of these products?

2. Are there specific public health considerations other than misuse and abuse that FDA should incorporate into its current framework for benefit and risk assessment as a way to reduce the opioid addiction epidemic? That framework includes, but is not limited to, how FDA makes regulatory decisions to approve new opioids, evaluates their use in the postmarket setting, or limits or influences their prescribing through product labeling or other risk management measures.

II. Steps To Promote Proper Prescribing and Dispensing

Proper prescribing and dispensing are critical to successfully reducing opioid misuse and abuse. A 2016 Centers for Disease Control and Prevention (CDC) *Guideline for Prescribing Opioids for Chronic Pain* reported that, ''[w]hen opioids are used for acute pain, clinicians should prescribe the lowest effective dose of immediate-release opioids and should prescribe no greater quantity than needed for the expected duration of pain severe enough to require opioids. Three days or less will often be sufficient; more than seven days will rarely be needed.'' (Ref. 3.) And a recent analysis showed that, across six studies of patients who had undergone a variety of surgical procedures, 67 percent to 92 percent of patients reported unused opioid analgesics. Moreover, ''[r]ates of safe storage and/or disposal of unused opioids were low,'' resulting in an ''important reservoir of unused opioids available for nonmedical use . . . .'' (Ref. 4). There are clinical situations that may require a supply of opioid analgesics that exceeds current CDC guidelines and FDA wants to make sure that patients have what they need in those cases. But FDA believes there are situations in which patients are prescribed an opioid analgesic when a non-opioid pain treatment would be adequate or, when an opioid product is necessary, treatment with a shorter course of therapy would be more appropriate, and without specific requirements, variance in prescribing habits are likely to persist.

Specific questions on which FDA seeks comment relating to this topic are as follows:

1. Should FDA consider adding a recommended duration of treatment for specific types of patient needs (*e.g.,* for specific types of surgical procedures) to opioid analgesic product labeling? Or, should FDA work with prescriber groups that could, in turn, develop expert guidelines on proper prescribing by indication?

2. If opioid product labeling contained recommended duration of treatment for certain common types of patient needs, how should this information be used by FDA, other state and Federal health agencies, providers, and other intermediaries, such as health plans and pharmacy benefit managers, as the basis for making sure that opioid drug dispensing more appropriately and consistently aligns with the type of patient need for which a prescription is being written?

3. Are there steps FDA should take with respect to dispensing and packaging (*e.g.,* unit of use) to facilitate consistency of and promote appropriate prescribing practice?

4. Are there other steps that FDA should take to help promote the prescribing of treatment durations that are appropriately tailored to a clinical patient need?

III. Requirements for Prescriber Education

Recently, the option of mandating education or training for health care professionals who prescribe opioid medications has been more widely discussed,[1] and some states already are, or are considering, mandating such prescriber education. For example, as of July 1, 2017, health care professionals in New York State who are licensed to prescribe controlled substances must complete, and register their completion of, at least 3 hours of course work or training in pain management, palliative care, and addiction (Ref. 5).

Specific questions on which FDA seeks comment relating to this topic are as follows:

1. Are there circumstances under which FDA should require some form of mandatory education for health care professionals to ensure that prescribing professionals are informed about appropriate prescribing and pain management recommendations, understand how to identify the risk of abuse in individual patients, know how to get patients with a substance use disorder into treatment, and know how to prescribe treatment for—and properly manage—patients with substance use disorders, among other educational goals? Are there other steps FDA could take to educate health care professionals to ensure that prescribing professionals are informed about appropriate prescribing and pain management recommendations?

2. How might FDA operationalize such a requirement if it were to pursue this policy goal? For example, should mandatory education apply to all prescribing health care professionals, or only a subset of prescribing health care professionals? If only a subset, how would FDA construct a framework that focuses mandatory education on only that subset—for example, by requiring mandatory education only for those writing prescriptions for longer durations as opposed to those for very short-term use?

3. What steps should FDA take to make implementing such mandatory education efficient and more feasible? For example, should FDA work collaboratively with state public health agencies, state licensing boards, provider organizations, such as medical specialty societies and health plans, or with other stakeholders, such as

[1] FDA acknowledges the Joint Meeting of the Drug Safety and Risk Management Advisory Committee and the Anesthetic and Analgesic Drug Products Advisory Committee Meeting, held May 3–4, 2016, discussed mandatory education for health care professionals (Docket No. FDA–2016–N–0820).

pharmacy benefit managers, to integrate or avoid duplicating their educational programs or requirements? What other steps might FDA consider to make implementation less burdensome and more effective?

IV. Additional Matters for Consideration

1. What other steps should FDA take to operationalize the above described goals?

2. Are there additional policy steps FDA should consider relating to the OPSC that are not identified in this notice?

We invite interested parties to review these questions and submit comments to the docket for the OPSC to consider. In addition, we invite interested parties to submit additional policy considerations or recommendations for actions that FDA could or should undertake to help the Agency better address the opioid addiction crisis.

V. References

1. Gottlieb, Scott and J. Woodcock. ''Marshaling FDA Benefit-Risk Expertise to Address the Current Opioid Abuse Epidemic.'' *Journal of the American Medical Association.* 2017;318(5):421–422. Doi:10.1001/jama.2017.9205. Available at *http://jamanetwork.com/journals/jama/fullarticle/2643333.* Accessed August 2017.

2. National Academies of Sciences, Engineering, and Medicine. ''Pain Management and the Opioid Epidemic: Balancing Societal and Individual Benefits and Risks of Prescription Opioid Use (2017), Consensus Study Report.'' Richard J. Bonnie, Morgan A. Ford, and Jonathan K. Phillips (eds.). Available at *https://www.nap.edu/catalog/24781/pain-management-and-the-opioid-epidemic-balancing-societal-and-individual.* Accessed August 2017.

3. Dowell, D., T. M. Haegerich, and R. Chou. ''CDC Guideline for Prescribing Opioids for Chronic Pain—United States, 2016.'' Item 6 in ''Determining When to Initiate or Continue Opioids for Chronic Pain.'' *Morbidity and Mortality Weekly Report Recommendations and Reports* 2016;65(No. RR–1):1–49. DOI: *http://dx.doi.org/10.15585/mmwr.rr6501e1.* Accessed August 2017.

4. Bicket, M. C., J. J. Long, P. J. Pronovost, et al. ''Prescription Opioid Analgesics Commonly Unused After Surgery, A Systematic Review.'' *JAMA Surgery.* Published online August 2, 2017. DOI:10.1001/jamasurg.2017.0831. Available at *http://jamanetwork.com/journals/jamasurgery/fullarticle/2644905.* Accessed August 2017.

5. New York State Department of Health, Mandatory Prescriber Education. Available at *https://www.health.ny.gov/professionals/narcotic/mandatory_prescriber_education/.* Accessed August 2017.

Dated: September 26, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–20905 Filed 9–28–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[HHS–OS–0990–0281–60D]

Agency Generic Information Collection Activities; Proposed Collection; 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 28, 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 0990–0281–60D and project title for reference, to the Report Clearance Officer, Sherrette Funn.

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.

Information Collection Request Title: Prevention Communication Formative Research—Revision—OMB No. 0990–0281.

Abstract: The Office of Disease Prevention and Health Promotion (ODPHP) is focused on developing and disseminating health information to the public. ODPHP faces an increasingly urgent interest in finding effective ways to communicate health information to America's diverse population. ODPHP strives to be responsive to the needs of America's diverse audiences while simultaneously serving all Americans across a range of channels, from print to new communication technologies. To carry out prevention information efforts, ODPHP is committed to conducting formative and usability research to provide guidance on the development and implementation of their communication and education efforts. The information collected will be used to improve communication, products, and services that support key office activities including: Healthy People, Dietary Guidelines for Americans, Physical Activity Guidelines for Americans, *healthfinder.gov*, and increasing health care quality and patient safety. ODPHP communicates through its Web sites (*www.healthfinder.gov, www.HealthyPeople.gov, www.health.gov*) and through other channels including social media, print materials, interactive training modules, and reports. Data collection will be qualitative and quantitative and may include in-depth interviews, focus groups, web-based surveys, omnibus surveys, card sorting, and various forms of usability testing of materials and interactive tools to assess the public's understanding of disease prevention and health promotion content, responses to prototype materials, and barriers to effective use.

The program is requesting a 3-year clearance.

Likely Respondents: Respondents are likely to be either consumers or health professionals.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Data collection task	Instrument/form name	Number of respondents	Number responses/ respondent	Average burden/ response (in hours)	Total response burden (in hours)
In-depth interviews	Screener	1,500	1	10/60	250
	Interview	500	1	1.00	500
Focus groups	Screener	2,925	1	10/60	487.5

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Data collection task	Instrument/form name	Number of respondents	Number responses/ respondent	Average burden/ response (in hours)	Total response burden (in hours)
	Focus Group	975	1	1.50	1,462.5
Intercept interviews	Interview	5,250	1	5/60	437.50
Cognitive testing of instruments.	Screener	150	1	10/60	25
	Cognitive Test	50	1	2.00	100
Web-based surveys	Screener	30,000	1	5/60	2,500
	Survey	10,000	1	15/60	2,500
Omnibus surveys	Survey	2,100	1	10/60	350
Gatekeeper reviews	Review	325	1	30/60	162.5
Card sorting	Screener	600	1	10/60	100
	Card Sort	200	1	1.00	200
Usability and prototype testing of materials (print and web).	Screener	1,800	1	10/60	300
	Usability Test	600	1	1.00	600
Total					9,975.00

Darius Taylor,

Paperwork Reduction Act Reports Clearance Officer, Department of Health and Human Services.

[FR Doc. 2017–20901 Filed 9–28–17; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Support of Competitive Research (SCORE) Award Applications.

Date: October 18, 2017.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN 18, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Rebecca H. Johnson, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 25, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–20858 Filed 9–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 BTRC Application Review (2018/01).

Date: November 15–17, 2017.

Time: 6:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Boston Hotel Buckminster, 645 Beacon Street, Boston, MA 02215.

Contact Person: John P. Holden, Ph.D., Scientific Review Officer, National Institutes of Health, National Institute of Biomedical Imaging, and Bioengineering, Bethesda, MD 20892, (301) 496–8947, *john.holden@nih.gov*.

Dated: September 25, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–20856 Filed 9–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; NIH Pathways to Independence Award (K99/R00) Review.

Date: November 15, 2017.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Plaza, 7201 Wisconsin Avenue, Suite 533, Bethesda, MD 20814 (Telepresence).

Contact Person: Richard C. Palmer, DRPH, Health Scientist Administrator, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20906, (301) 451–2432, *richard.palmer@nih.gov.*

Dated: September 25, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–20860 Filed 9–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Revision to Identifying Experts in Prevention Science Methods To Include on NIH Review Panels, Office of Disease Prevention (NIH ODP)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 6, 2017, page 31337 (82 FR 31337) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attn: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Ranell Myles, Public Health Analyst, NIH Office of Disease Prevention, 6100 Executive Blvd., Room 2B03, Bethesda, MD 20892 or call (301) 827–5579 or email your request, including your address to *prevention@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The Office of Disease Prevention, National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Identifying Experts in Prevention Science Methods to Include on NIH Review Panels,—REVISION, Office of Disease Prevention (ODP), National Institutes of Health (NIH) (OMB# 0925–0728, Expiration date 12/31/2018)

Need and Use of Information Collection: The Office of Disease Prevention (ODP) is the lead Office at the National Institutes of Health (NIH) responsible for assessing, facilitating, and stimulating research in disease prevention and health promotion, and disseminating the results of this research to improve public health. Prevention is preferable to treatment, and research on disease prevention is an important part of the NIH's mission. The knowledge gained from this research leads to stronger clinical practice, health policy, and community health programs. ODP collaborates with the NIH, other Department of Health and Human Services (DHHS) agencies, and other public and private partners to achieve the Office's mission and goals. One of our priorities is to promote the use of the best available methods in prevention research and support the development of better methods. One of our strategies is to help the Center for Scientific Review (CSR) identify experts in prevention science methods to include on their review panels. This will strengthen the panels and improve the quality of the prevention research supported by the NIH. To identify experts in prevention science methods, we worked with our contractor, IQ Solutions, Inc., to develop online software which will allow us to collect scientists' names, contact information, and resumes, as well as to have those scientists identify their level of expertise in a variety of prevention science methods and content areas. The information collected with this software was used to create a web-based tool that CSR staff can use to identify scientists with expertise in specific prevention science methods and content areas for invitation to serve on one of the CSR review panels. This system will also be shared with review staff in the other Institutes and Centers at the NIH, as well as other DHHS agencies, to use in the same way. Given our plans to create an automated system for reviewer information collection, we are now seeking OMB approval for an extension and the addition of more questions.

This PRA clearance request is for the collection of additional data not collected in the previously deployed online software and survey including additional study design topics, research methods topics, content topics, as well as the geographic region of research, and the income category of the region/country in which the research is performed. The request also includes asking researchers who have already completed previous versions of the survey to update their information based on the revised additional topics.

OMB revision approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,550.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Investigators	3,120	1	25/60	1,300
Returning Investigators to update information	1,000	1	15/60	250
Total	4,120	4,120	.....	1,550

Dated: September 24, 2017.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2017–20885 Filed 9–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; ZMD1 DRI (J1) NIH Support for Conferences and Scientific Meetings (Parent R13).

Date: October 23, 2017.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Plaza, 533, 7201 Wisconsin Avenue, Suite 533, Bethesda, MD 20814 (Telepresence).

Contact Person: Deborah Ismond, Ph.D., Scientific Review Officer, Division of Scientific Programs, National Institute on Minority Health and Health Disparities, National Institutes of Health, 7201 Wisconsin Ave., Suite 525, Bethesda, MD 20814, (301) 594–2704, *ismonddr@mail.nih.gov*.

Dated: September 25, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–20859 Filed 9–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: November 9, 2017.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 3049, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Ste. 4076, MSC 9306, Bethesda, MD 20892–9306, 301–402–0838, *barbara.thomas@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 26, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–20988 Filed 9–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Planning NIDDK Clinical Trials.

Date: November 9, 2017.

Time: 9:00 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Program Project (P01).

Date: November 14, 2017.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7343, 6707 Democracy Boulevard,

Bethesda, MD 20817, 301–496–9010, *hoffertj@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Sphincterotomy for Acute Recurrent Pancreatitis.

Date: November 15, 2017.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; AT Deficiency P01.

Date: November 29, 2017.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7021, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 25, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–20857 Filed 9–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: October 24–26, 2017.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nancy Vazquez-Maldonado, Ph.D., Scientific Review Officer Scientific Review Program, Division of Extramural Activities, Room 3F52B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5044, *nvazquez@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: October 26, 2017.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Dharmendar Rathore, Ph.D., Senior Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G30, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, 240–669–5058, *rathored@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 25, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–20855 Filed 9–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0126]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection; Collection of Qualitative Feedback through Focus Groups

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until November 28, 2017.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0126 in the body of the letter, the agency name and Docket ID USCIS–2012–0004. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2012–0004;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2012–0004 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking

Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Collection of Qualitative Feedback through Focus Groups.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Business or other for-profit. The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback USCIS means information that provides useful insights on perceptions and opinions, but not responses to statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide information on customer and stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, and/or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders and contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not be generalized to the overall population. This data collection will not be used to generate quantitative information that is designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection is 3,000 and the estimated hour burden per response is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 4,500 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: September 26, 2017.

Jerry Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2017–20914 Filed 9–28–17; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0178]

Agency Information Collection Activities: Submission to the Office of Management and Budget for Review and Approval; Native American Business Development Institute (NABDI) Funding Solicitations and Reporting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 30, 2017.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Mr. Jack Stevens, Division Acting Director, Office of Indian Energy and Economic Development, Assistant Secretary—Indian Affairs, 1849 C Street NW., MS–4152 MIB, Washington, DC 20240; or by email to *Jack.Stevens@bia.gov*. Please reference OMB Control Number 1076–0178 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mr. Jack Stevens by telephone at (202) 208–6764. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of

information was published on July 26, 2017 (82 FR 34686). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Division of Economic Development (DED), within the Office of Indian Energy and Economic Development (IEED), established the Native American Business Development Institute (NABDI) to provide technical assistance funding to federally recognized American Indian Tribes seeking to retain universities and colleges, private consulting firms, non-academic/non-profit entities, or others to prepare studies of economic development opportunities or plans. These studies and plans will empower American Indian Tribes and Tribal businesses to make informed decisions regarding their economic futures. Studies may concern the viability of an economic development project or business or the practicality of a technology a Tribe may choose to pursue. The DED will specifically exclude from consideration proposals for research and development projects, requests for funding of salaries for Tribal government personnel, funding to pay legal fees, and requests for funding for the purchase or lease of structures, machinery, hardware or other capital items. Plans may encompass future periods of five years or more and include one or more economic development factors including but not limited to land and retail use, industrial development, tourism, energy, resource development and transportation.

This is an annual program whose primary objective is to create jobs and foster economic activity within Tribal communities. The DED will administer the program within IEED; and studies and plans as described herein will be sole discretionary projects DED will consider or fund absent a competitive bidding process. When funding is available, DED will solicit proposals for studies and plans. To receive these funds, Tribes may use the contracting mechanism established by Public Law 93–638, the Indian Self-Determination Act or may obtain adjustments to their funding from the Office of Self-Governance. See 25 U.S.C. 450 *et seq.*

Interested applicants must submit a Tribal resolution requesting funding, a statement of work describing the project for which the study is requested or the scope of the plan envisioned, the identity of the academic institution or other entity the applicant wishes to retain (if known) and a budget indicating the funding amount requested and how it will be spent. The DED expressly retains the authority to reduce or otherwise modify proposed budgets and funding amounts.

Applications for funding will be juried and evaluated on the basis of a proposed project's potential to generate jobs and economic activity on the reservation.

Title of Collection: Native American Business Development Institute (NABDI) Funding Solicitations and Reporting.

OMB Control Number: 1076–0178.

Form Number: None.

Type of Review: Extension without change of currently approved collection.

Respondents/Affected Public: Indian Tribes with trust or restricted land.

Total Estimated Number of Annual Respondents: 20 applicants per year; 20 project participants each year, on average.

Total Estimated Number of Annual Responses: 40.

Estimated Completion Time per Response: 50 hours per application; 1.5 hours per progress report.

Total Estimated Number of Annual Burden Hours: 1,030 hours (1,000 for applications and 30 for final reports).

Respondent's Obligation: Response is required to obtain a benefit.

Frequency of Collection: Once per year for applications and final report.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2017–20932 Filed 9–28–17; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYR02000 L14400000.ER0000.17X, WYW–166003]

Notice of Intent To Prepare an Environmental Impact Statement for the Leavitt Reservoir Expansion Project, Big Horn County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM), through the Cody Field Office, Cody, Wyoming, intends to prepare an Environmental Impact Statement (EIS) for the proposed Leavitt Reservoir Expansion Project (Project) in Big Horn County, Wyoming. The BLM is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: Comments may be submitted in writing until November 13, 2017. In order to be included in the analysis, all comments must be received prior to the close of the 45-day scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation as appropriate. The dates and locations of any scoping meetings will be announced at least 15 days in advance through the local news media, newspapers, and the BLM ePlanning Web site at: *http://bit.ly/Leavitt_Reservoir_EIS_2bcgpgW.*

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: blm_wy_cody_comments@blm.gov.*
- *Fax:* 307–578–5939.
- *Mail*: NEPA Coordinator, BLM Cody Field Office, 1002 Blackburn Street, Cody, Wyoming 82414.

Documents pertinent to this proposal are available for public review at the BLM Cody Field Office and on the BLM ePlanning Web site at: *http://bit.ly/Leavitt_Reservoir_EIS_2bcgpgW.*

FOR FURTHER INFORMATION CONTACT: Bradley Johnson, Planning & Environmental Coordinator, telephone: 307–578–5928; address: 1002 Blackburn Street, Cody, Wyoming 82414; email: *bbjohnson@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 Mr. Johnson during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours. You may call either of these numbers to have your name added to the project mailing list.

SUPPLEMENTARY INFORMATION: This Notice initiates the public scoping process for the EIS. The BLM intends to prepare an EIS to support the decision making for the proposed Project and conduct a public scoping period to seek input on the preliminary issues identified regarding this proposal. The Wyoming Water Development Commission proposes to enlarge the water storage capacity of Leavitt Reservoir to a total capacity of 6,604 acre feet for the purposes of multiple use that include late season irrigation, flood attenuation and recreation. A 1.5-mile sub-surface pipeline from Beaver Creek will divert water to the reservoir inlet via a 42-inch diameter pipeline across private lands. A permanent sub-surface transfer pipeline, approximately three miles long, is proposed downstream in the Beaver Creek drainage to efficiently convey reservoir release water to irrigation infrastructure.The proposal area is between the towns of Greybull and Shell, Wyoming, in the Sixth Principal Meridian, Wyoming, T. 54 N., R. 92 W., sec. 13, NW1/4SW1/4 and SW1/4SW1/4; sec. 14, NE1/4SE1/4 and SE1/4SE1/4; sec. 23, NE1/4NE1/4 and SE1/4NE1/4; sec. 24, lots 3 and 4, SW1/4NW1/4, SE1/4NW1/4, NW1/4SW1/4, NE1/4SW1/4, and SW1/4SE1/4.

Preliminary issues include: Potential impacts to wetlands and cultural sites (properties), ground and surface waters, mineral development, wildlife habitat, and the county road right-of-way. The BLM will identify, analyze, and require mitigation, as appropriate, to address the reasonably foreseeable impacts to resources from the approval of this Project. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensatory mitigation; and may be considered at multiple scales, including the landscape-scale.

The BLM seeks resource information and data for public land values (*e.g.,* air quality, cultural and historic resources, fire/fuels, fisheries, forestry, lands and realty, non-energy minerals and geology, oil and gas, paleontology, rangeland management, recreation, soil, water, and wildlife) in the project area. As proposed, approximately 48 percent of the project area would take place on BLM-managed public lands. The proposed dam and nearly the entirety of the expanded reservoir would reside on BLM lands. The proposed pipeline and borrow areas both cross or take place nearly in their entirety on private lands. The purpose of this request is to ensure that the project analysis has sufficient information and data to consider a reasonable range of resource uses, management options, and alternatives for managing public lands.

Please submit information to the Cody Field Manager at the address above. The BLM will treat proprietary information submissions marked as ''Confidential'' in accordance with the laws and regulations governing the confidentiality of such information. To provide the public with an opportunity to review the proposal and associated information, as well as any proposed plan amendments, the BLM will host meetings before October 30, 2017. The BLM will notify the public of meetings and any other opportunities for the public to be involved in the process for this proposal at least 15 days prior to the event. Meeting dates, locations and times will be announced by a news release to the media, individual emailings, and postings on the project Web site. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS.

The BLM will use and coordinate the NEPA commenting process to help fulfill the public involvement process under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108), as provided for in 36 CFR 800.2(d)(3). The information about historic and cultural resources in the area potentially affected by the proposal will assist the lead agency in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA. Native American tribal consultations will be conducted in accordance with policy, and tribal concerns will be given due consideration. Federal, state and local agencies, along with other stakeholders that may be interested or affected by the BLM's decisions on this proposal, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

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 may 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: 40 CFR 1501.7.

Mary Jo Rugwell,

BLM Wyoming State Director.

[FR Doc. 2017–21140 Filed 9–28–17; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2017–0059; MMAA104000]

Record of Decision for the Cape Wind Energy Project

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability of a Record of Decision.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) is announcing the availability of a Record of Decision (ROD) for the Cape Wind Energy Project Final Supplemental Environmental Impact Statement (SEIS) in this Notice of Availability (NOA). The SEIS was prepared in response to a 2016 remand order from the U.S. Court of Appeals for the District of Columbia Circuit in *Public Employees for Environmental Responsibility* v. *Hopper,* 827 F.3d 1077 (D.C. Cir. 2016), in which the Court vacated the 2009 Cape Wind Energy Project Final Environmental Impact Statement (EIS) and ordered BOEM to supplement the EIS with adequate geological surveys before Cape Wind Associates LLC (Cape Wind) may begin construction. The SEIS presented two alternatives: The Proposed Action (affirming BOEM's issuance of the existing lease) and the No Action Alternative (requiring BOEM to rescind lease issuance). BOEM has decided to select the Proposed Action Alternative.

ADDRESSES: The ROD and associated information are available on BOEM's Web site at *https://www.boem.gov/Massachusetts-Cape-Wind/.*

FOR FURTHER INFORMATION CONTACT: For more information on the ROD, you may

contact Mr. James Bennett, Program Manager, Office of Renewable Energy Programs, by telephone at 703–787–1300 or by email at *james.bennett@boem.gov.*

SUPPLEMENTARY INFORMATION: On July 5, 2016, the U.S. Court of Appeals for the District of Columbia Circuit vacated the 2009 Cape Wind Energy Project Final EIS and ordered that BOEM: ''supplement [the EIS] with adequate geological surveys before Cape Wind may begin construction.'' *Public Employees for Environmental Responsibility* v. *Hopper,* 827 F.3d 1077, 1084 (D.C. Cir. 2016). The Court opined that: ''[w]ithout adequate geological surveys, the [BOEM] cannot 'ensure that the seafloor [will be] able to support' wind turbines.'' *Id.* at 1083. While the Court found that: ''[BOEM] therefore had violated NEPA (National Environmental Policy Act)'' the Court noted that ''. . . [it] does not necessarily mean that the project must be halted or that Cape Wind must redo the regulatory approval process.'' *Id.* at 1083–4. The Court explicitly left undisturbed BOEM's 2010 decision to issue the lease and BOEM's 2011 decision to approve the Construction and Operations Plan (COP). *Id.* at 1084. In light of the remand order and the remaining valid lease and COP, only two alternatives remain relevant to the court's remand: The Proposed Action (affirming BOEM's issuance of the existing lease) and the No Action Alternative (BOEM rescinding the lease). In its Final SEIS, BOEM examines the available geological survey data, including the geotechnical data and reports submitted to BOEM since the 2009 Final EIS, any other relevant data that relates to the adequacy of the seafloor to support wind turbines in the lease area, and considers public comments.

On March 31, 2017, BOEM published the Draft SEIS, in response to the Court's 2016 remand order discussed above, and a NOA in the **Federal Register** to announce the availability of the Draft SEIS and initiate a 45-day public comment period (82 FR 16060). Comments received can be found at *http://www.regulations.gov* by searching for docket ID BOEM–2017–0008. The Final SEIS addressed comments received by BOEM in response to the Draft SEIS during the 45-day comment period. On August 4, 2017 (82 FR 36418), BOEM published a NOA announcing the availability of the Final SEIS in the **Federal Register**. The Final SEIS can be found on BOEM's Web site at: *https://www.boem.gov/Massachusetts-Cape-Wind/.*

Authority: This notice is published pursuant to the regulations (40 CFR part 1506.6(b)) implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: September 26, 2017.

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2017–20936 Filed 9–28–17; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1054]

Certain Height-Adjustable Desk Platforms and Components Thereof; Commission's Determination Not To Review an Initial Determination Terminating the Investigation Based on Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 10) terminating the investigation based on settlement.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 4, 2017 based on a complaint, filed on behalf of Varidesk LLC of Coppell, Texas (''complainant''). 82 FR 20919–20 (May 4, 2017). The complaint as supplemented alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain height-adjustable desk platforms and components thereof by reason of infringement of U.S. Patent No. 9,113,703; U.S. Patent No. 9,277,809; and U.S. Patent No. 9,554,644. The complaint further alleges that an industry in the United States exists as required by section 337. The Commission's notice of investigation named Lumi Legend Corporation of Ningbo, China; Innovative Office Products LLC of Easton, Pennsylvania; Ergotech Group LLC of Easton, Pennsylvania; Monoprice, Inc. of Rancho Cucamonga, California; and Transform Partners LLC (dba Mount-It!) of San Diego, California (collectively ''the Lumi Legend respondents''); Loctek Ergonomic Technology Corporation (formerly, Ningbo Loctek Visual Technology Corporation of Ningbo, China) of Ningbo, China; Zhejiang Loctek Smart Drive Technology Co., Ltd. of Ningbo, China; and Loctek Inc.'s (formerly, Zoxou, Inc. of Fremont, California) of Fremont, California (collectively herein, ''Loctek respondents''). The Office of Unfair Import Investigations did not participate in the investigation. The Lumi Legend respondents were previously terminated based on settlement. Order No. 5 (*unreviewed,* Commission Notice (July 11, 2017)).

On August 29, 2017, complainant and the Loctek respondents filed a joint motion to terminate the Locktek respondents based on settlement. The motion asserted that there are no other agreements between complainant and the Loctek respondents. The parties represented ''there are no other agreements, written or oral, express or implied, between these parties concerning the subject matter of the Investigation.'' Motion at 1.

On August 31, 2017, the ALJ issued an ID (Order No. 10) terminating the investigation based on settlement of the Loctek respondents. The ALJ found that all of the requirements of Commission rule 210.21, 19 CFR 210.21, had been met and that there were no public interest concerns that would weigh against termination. No petitions for review were filed.

The Commission has determined not to review the subject ID and terminates the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of

Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 26, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–20904 Filed 9–28–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–584 and 731–TA–1382 (Preliminary)]

Uncoated Groundwood Paper From Canada; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of uncoated groundwood paper from Canada, provided for in subheadings 4801.00.01, 4802.61.10, 4802.61.20, 4802.61.31, 4802.61.60, 4802.62.10, 4802.62.20, 4802.62.30, 4802.62.61, 4802.69.10, 4802.69.20, 4802.69.30, 4805.91.50, 4805.91.70, and 4805.91.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of Canada.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On August 9, 2017, North Pacific Paper Company (''NORPAC''), Longview, Washington filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of uncoated groundwood paper from Canada. Accordingly, effective August 9, 2017, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701–TA–584 and antidumping duty investigation No. 731–TA–1382 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 15, 2017 (82 FR 38707). The conference was held in Washington, DC, on August 30, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on September 25, 2017. The views of the Commission are contained in USITC Publication 4732 (October 2017), entitled *Uncoated Groundwood Paper from Canada: Investigation Nos. 701–TA–584 and 731–1382 (Preliminary).*

By order of the Commission.

Issued: September 25, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–20878 Filed 9–28–17; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1035]

Certain Liquid Crystal Ewriters and Components Thereof; Commission Final Determination of Violation of Section 337; Termination of Investigation; Issuance of Limited Exclusion Order and Cease and Desist Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The Commission has determined to issue a limited exclusion order and cease and desist order. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 13, 2017, based on a complaint filed by Kent Displays, Inc. of Kent, Ohio (''Kent Displays''). 82 FR 4418. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain liquid crystal eWriters and components thereof that infringe U.S. Patent Nos. 7,351,506 (''the '506 patent'') and 8,947,604 (''the '604 patent''). *Id.* The Commission's notice of investigation named as respondents Shenzhen Howshow

Technology Co., Ltd., d/b/a Shenzhen Howshare Technology Co., Ltd., d/b/a Howshare (''Howshare'') of Shenzhen, China, and Shenzhen SUNstone Technology Co., Ltd., d/b/a iQbe (''iQbe'') of Shenzhen, China. *Id.* The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

On April 11, 2017, the ALJ issued an ID finding iQbe in default for failing to respond to the complaint, the notice of investigation, and multiple discovery requests, and for failing to respond to an order to show cause why it should not be found in default. Order No. 9, *not reviewed,* Notice (May 11, 2017).

On May 31, 2017, the ALJ issued an ID, granting Kent Displays' motion to terminate the investigation with respect to Howshare based on a withdrawal of the complaint. Order No. 11 (May 31, 2017).

On June 1, 2017, Kent Displays filed a declaration seeking a limited exclusion order (''LEO'') and a proposed cease and desist order (''CDO'') against the defaulted respondent iQbe pursuant to section 337(g)(1) and Commission Rule 210.16(c). The declaration contains Kent Displays' views on remedy, the public interest, and bonding. A proposed LEO and CDO were attached to the declaration.

On June 26, 2017, the Commission issued a notice determining not to review Order No. 11. Notice (Jun. 26, 2017); 82 FR 29930–31 (June 30, 2017). The notice also requested written submissions on the issues of remedy, the public interest, and bonding concerning the requested LEO and CDO against iQbe. *Id.*

On July 10, 2017, Kent Displays filed its submission on remedy, the public interest, and bonding. No other submissions were received.

Having reviewed the submissions on remedy, the public interest, and bonding filed in response to the Commission's Notice, and the information provided in the complaint, the Commission has determined, pursuant to section 337(g)(1), 19 U.S.C. 1337(g)(1), that the appropriate form of relief in this investigation is: (1) An LEO against iQbe, prohibiting the unlicensed entry of liquid crystal eWriters and components thereof that infringe claims 1–5, 10, 11, 13–16, 18–23, 26, and 27 of the '506 patent and/or claims 1, 2, 9–11, 15–17, 21, and 22 of the '604 patent and (2) an order that iQbe cease and desist from importing, selling, marketing, advertising, distributing, transferring (except for exportation), soliciting United States agents or distributors, and aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of liquid crystal eWriters and components thereof that infringe claims 1–5, 10, 11, 13–16, 18–23, 26, and 27 of the '506 patent and/or claims 1, 2, 9–11, 15–17, 21, and 22 of the '604 patent.

The Commission has determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude the issuance of the LEO or CDO. The Commission has determined that bonding at 100 percent of the entered value of the covered products is required during the period of Presidential review, 19 U.S.C. 1337(j).

The Commission's order and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 26, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–20939 Filed 9–28–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Shaving Cartridges, Components Thereof and Products Containing Same, DN 3257;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of The Gillette Company LLC on September 25, 2017. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain shaving cartridges, components thereof and products containing same. The complaint names as respondents Edgewell Personal Care Company of Chesterfield, MO; Edgewell Personal Care Brands, LLC of Shelton, CT; Edgewell Personal Care, LLC of Shelton, CT; Schick Manufacturing, Inc. of Shelton, CT; and Schick (Guangzhou) Co., Limited of China. The complainant requests that the Commission issue a limited exclusion, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested

remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3257'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 25, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–20893 Filed 9–28–17; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on August 23, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Elässer GmbH, Horb, GERMANY; NovoDisc Midia Digital Ltda, Sao Paulo, BRAZIL; Signature Media Services, Valencia, CA; and Zheijang Tianle Digital Electric, Shengzhou, Zhejiang, PEOPLE'S REPUBLIC OF CHINA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on May 25, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 20, 2017 (82 FR 28093).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–20881 Filed 9–28–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Automotive Cybersecurity Industry Consortium

Notice is hereby given that, on August 23, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Automotive Cybersecurity Industry Consortium (''ACIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Mazda Motor of America, Inc., Irvine, CA; American Honda Co., Inc., Torrance, CA; and Toyota Motor North America, Inc., Saline, MI, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ACIC intends to file additional written notifications disclosing all changes in membership.

On January 11, 2017, ACIC filed its original notification pursuant to Section

6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 27, 2017 (82 FR 11942).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–20880 Filed 9–28–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: Registrants listed below have applied for and been granted registration by the Drug Enforcement Administration as importers of various classes of schedule I or II controlled substances.

SUPPLEMENTARY INFORMATION: The companies listed below applied to be registered as importers of various basic classes of controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted and no requests for hearing were submitted for these notices.

Company	FR docket	Published
United States Pharmacopeial.		
Convention	82 FR 34694	July 26, 2017.
AMRI Rensselaer, Inc	82 FR 34696	July 26, 2017.
R & D Systems, Inc	82 FR 35546	July 31, 2017.
Sigma-Aldrich International.		
GMBH	82 FR 35547	July 31, 2017.
Cambrex High Point, Inc	82 FR 35992	August 2, 2017.

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of the listed registrants to import the applicable basic classes of schedule I or II controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the DEA has granted a registration as an importer for schedule I or II controlled substances to the above listed persons.

Dated: September 21, 2017.

Demetra Ashley,

Acting Assistant Administrator.

[FR Doc. 2017–20943 Filed 9–28–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Cody Laboratories, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefor, may file written comments on or objections to the issuance of the proposed registration on or before October 30, 2017. Such persons may also file a written request for a hearing on the application on or before October 30, 2017.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on June 16, 2017, Cody Laboratories, Inc., Steve Hartman, 601 Yellowstone Avenue, Cody, Wyoming 82414–9321 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Phenylacetone	8501	II
Poppy Straw Concentrate.	9670	II
Tapentadol	9780	II

The company plans to import narcotic raw materials to manufacture bulk controlled substances for distribution to its customers. The company plans to import an intermediate form of tapentadol (9870), to bulk manufacture tapentadol for distribution to its customers.

Dated: September 21, 2017.

Demetra Ashley,

Acting Assistant Administrator.

[FR Doc. 2017–20942 Filed 9–28–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Bellwyck Clinical Services

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before October 30, 2017. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before October 30, 2017.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on June 30, 2017, Bellwyck Clinical Services, 8946 Global Way, West Chester, Ohio 45069 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Amphetamine	1100	II
Methylphenidate	1724	II
Oxycodone	9143	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically-manufactured FDF. This analysis is required to allow the company to export domestically-manufactured FDF to foreign markets. Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: September 21, 2017.

Demetra Ashley,

Acting Assistant Administrator.

[FR Doc. 2017–20941 Filed 9–28–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Research Triangle Institute

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before November 28, 2017.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on March 31, 2017, Research Triangle Institute, 3040 East Cornwallis Road, Hermann Building, Room 106, Research Triangle Park, North Carolina 27709–2194 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

The company will manufacture marihuana (7360) and tetrahydrocannabinols (7370) for use by their researchers under the above listed controlled substances as Active Pharmaceutical Ingredient (API) for clinical trials.

In reference to drug code (7370) the company plans to bulk manufacture a synthetic tetrahydrocannabinol. No other activities for this drug code are authorized for this registration.

Dated: September 21, 2017.

Demetra Ashley,

Acting Assistant Administrator.

[FR Doc. 2017–20947 Filed 9–28–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On September 19, 2017, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of South Carolina in the lawsuit entitled *United States* v. *JW Aluminum Company,* Civil Action No. 17–cv–02490–DCN.

The United States filed this lawsuit under the Clean Air Act. The United States' complaint seeks injunctive relief and civil penalties for violations of the regulations that govern secondary aluminum production at the defendant's facility in Mount Holly, South Carolina. The consent decree requires the defendant to perform injunctive relief and pay a $230,000 civil penalty.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *JW Aluminum Company,* D.J. Ref. No. 90–5–2–1–

09845. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $18.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–20877 Filed 9–28–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Record of Vote of Meeting Closure

I, J. Patricia Wilson Smoot, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 12:00 a.m., on Tuesday, September 26, 2017 at the U.S. Parole Commission, 90 K Street NE., Third Floor, Washington, DC 20530. The purpose of the meeting was to discuss original jurisdiction cases pursuant to 28 CFR Section 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of the General Counsel that this meeting may be closed by votes of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: J. Patricia Wilson Smoot, Patricia K. Cushwa and Charles T. Massarone.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: September 26, 2017.

J. Patricia Wilson Smoot,

Chairperson, U.S. Parole Commission.

[FR Doc. 2017–21069 Filed 9–27–17; 4:15 pm]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than October 10, 2017.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 10, 2017.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of August 2017.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

159 TAA Petitions Instituted Between 6/5/17 and 8/18/17

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
92929	Intel Corporation (Workers)	Rio Rancho, NM	06/05/17	06/02/17
92930	Robertshaw (Company)	Chattanooga, TN	06/05/17	06/02/17
92931	United Parcel Service (State/One-Stop)	West Columbia, SC	06/05/17	06/05/17
92932	Perrigo (State/One-Stop)	Allegan, MI	06/06/17	06/05/17
92933	Wolfe Tory Medical Inc. (State/One-Stop)	Salt Lake City, UT	06/06/17	06/05/17
92934	Data Listing Services dba The Connection (State/One-Stop).	Olean, NY	06/06/17	06/05/17
92935	Jefferson Yarns, Inc. (Workers)	Pulaski, VA	06/08/17	05/19/17
92936	Stratus Technologies (Company)	Phoenix, AZ	06/09/17	06/08/17
92937	Caterpillar Inc. (Workers)	Newberry, SC	06/09/17	06/08/17
92938	Adient US, LLC (Company)	Lexington, TN	06/09/17	06/08/17
92938A	Adient US, LLC (Company)	Lexington, TN	06/09/17	06/08/17
92939	SKF USA, Inc. (State/One-Stop)	San Diego, CA	06/12/17	06/09/17
92940	The Nielsen Company (State/One-Stop)	Fond Du Lac, WI	06/12/17	06/09/17
92941	The Prudential Insurance Company of America (State/One-Stop).	Roseland, NJ	06/12/17	06/09/17
92942	SECO Manufacturing (State/One-Stop)	Mound City, IL	06/13/17	06/12/17

159 TAA PETITIONS INSTITUTED BETWEEN 6/5/17 AND 8/18/17—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
92943	Madico, Incorporated (Company)	Woburn, MA	06/13/17	06/09/17
92944	Alliance Interiors LLC (State/One-Stop)	Lansing, MI	06/13/17	06/12/17
92945	APL Logistics (State/One-Stop)	Hodgkins, IL	06/13/17	06/12/17
92946	Carlisle Etcetera LLC (State/One-Stop)	New York, NY	06/13/17	06/12/17
92947	Vista Inkjets, Inc. (Company)	Tucson, AZ	06/14/17	04/03/17
92948	CompuCom (State/One-Stop)	Plano, TX	06/14/17	06/13/17
92949	FreightCar America (State/One-Stop)	Roanoke, VA	06/14/17	06/13/17
92950	Health Care Service Corporation (State/One-Stop)	Richardson, TX	06/15/17	06/14/17
92951	Mersen USA Newburyport-MA LLC (State/One-Stop)	El Paso, TX	06/15/17	06/14/17
92952	Eagle Family Foods Group LLC (State/One-Stop)	Seneca, MO	06/15/17	06/14/17
92953	Kelly Services Inc. (State/One-Stop)	Troy, MI	06/16/17	06/15/17
92954	Resolute Forest Products (Workers)	Jonesville, Lancaster, Catauba, SC	06/16/17	06/14/17
92955	Recaro North America (Workers)	Auburn Hills, MI	06/16/17	06/13/17
92956	Capgemini (State/One-Stop)	Phoenix, AZ	06/19/17	06/16/17
92957	Zippo Manufacturing Company (State/One-Stop)	Bradford, PA	06/19/17	06/19/17
92958	Alamac Investors LLC dba Alamac American Knits (Company).	Lumberton, NC	06/20/17	06/19/17
92959	ASG Technologies (State/One-Stop)	Phoenix, AZ	06/20/17	06/19/17
92960	General Motors (GM) (State/One-Stop)	Kansas City, KS	06/20/17	06/19/17
92961	North American Communications (Workers)	Duncansville, PA	06/21/17	06/20/17
92962	Fisher & Ludlow Inc. (State/One-Stop)	Litchfield, IL	06/21/17	06/20/17
92963	International Automotive Components (IAC) (State/One-Stop).	Springfield, TN	06/21/17	06/21/17
92964	Greystone Manufacturing, LLC (State/One-Stop)	Sand Springs, OK	06/22/17	06/21/17
92965	General Electric Power Conversion US Inc. (State/One-Stop).	Pittsburgh, PA	06/22/17	06/21/17
92966	Cadmus Journal Services, Inc. (Workers)	Lancaster, PA	06/22/17	06/21/17
92967	NICE Systems (State/One-Stop)	Richardson, TX	06/22/17	06/22/17
92968	Fiserv, Inc. (State/One-Stop)	Lincoln, NE	06/22/17	06/22/17
92969	Louis Garneau USA, Inc. (State/One-Stop)	Derby, VT	06/23/17	06/22/17
92970	Excel Industries, Inc. (State/One-Stop)	Hesston, KS	06/23/17	06/22/17
92971	The Carlstar Group (Workers)	Ontario, CA	06/23/17	06/22/17
92972	Hewlett Packard Enterprise Services (State/One-Stop)	Pontiac, MI	06/26/17	06/23/17
92973	The Boeing Company, Inc. (Company)	Ladson, SC	06/26/17	06/23/17
92974	Checkfreepay Corporation (State/One-Stop)	Wallingford, CT	06/27/17	06/26/17
92975	T&W Forge, LLC. (Company)	Alliance, OH	06/27/17	06/26/17
92976	Vishay Transistor (State/One-Stop)	Bennington, VT	06/27/17	06/26/17
92977	Whittaker Control System dba Meggitt Aerospace (State/One-Stop).	Corona, CA	06/28/17	06/27/17
92978	Global Display Solutions, Inc. (Company)	Rockford, IL	06/29/17	06/05/17
92979	Integrated Energy Technologies Inc. (Union)	Chula Vista, CA	06/29/17	06/28/17
92980	Technicolor, Inc. (State/One-Stop)	Ontario, CA	06/29/17	06/28/17
92981	TomTom North America, Inc. (Company)	Lebanon, NH	06/29/17	06/28/17
92982	Williams Controls (Company)	Portland, OR	06/30/17	06/29/17
92983	Autodesk (State/One-Stop)	Lake Oswego, OR	07/03/17	06/30/17
92984	Bear Island Paper/White Birch LLC (State/One-Stop)	Ashland, VA	07/03/17	06/30/17
92985	BJC Heathcare System (Workers)	St. Louis, MO	07/03/17	06/30/17
92986	Conduent Business Services/Xerox (State/One-Stop)	Coos Bay, OR	07/03/17	06/30/17
92987	Frye Electronics (State/One-Stop)	Portland, OR	07/03/17	06/30/17
92988	Coax LLC (State/One-Stop)	Tigard, OR	07/03/17	06/30/17
92989	HSBC Technology and Services, USA (HTSU) (State/One-Stop).	Depew, NY	07/03/17	06/30/17
92990	Metalcast Products (State/One-Stop)	Salina, KS	07/03/17	06/30/17
92991	Moventas Gears Inc. (State/One-Stop)	Portland, OR	07/03/17	06/30/17
92992	Hewlett Packard Enterprise (State/One-Stop)	Chicago, IL	07/05/17	07/03/17
92993	Zodiac Aerospace (Health Tecna) (State/One-Stop)	Bellingham, WA	07/05/17	07/03/17
92994	Buckeye Hone Company, Inc. (State/One-Stop)	Bucyrus, OH	07/06/17	07/05/17
92995	Dell (Workers)	Round Rock, TX	07/06/17	07/05/17
92996	GVL Poly (State/One-Stop)	Hesston, KS	07/06/17	07/05/17
92997	HSBC Technology and Services, USA (HTSU) (State/One-Stop).	Jersey City, NJ	07/06/17	07/05/17
92998	Nebraska Land Title and Abstract Company (NLTA) (State/One-Stop).	Omaha, NE	07/07/17	07/06/17
92999	Atlas Copco Secoroc LLC (Company)	Grand Prairie, TX	07/10/17	07/07/17
93000	CA, Inc. (State/One-Stop)	Ewing, NJ	07/10/17	07/07/17
93001	CSC—Computer Sciences Corporation (State/One-Stop)	Blythewood, SC	07/10/17	07/07/17
93002	Motor Appliance Corporation (State/One-Stop)	Blytheville, AR	07/10/17	07/07/17
93003	DXC Technology (State/One-Stop)	Omaha, NE	07/11/17	07/10/17
93004	IEEE (State/One-Stop)	Piscataway, NJ	07/11/17	05/30/17
93005	Infotree Services (State/One-Stop)	Grove City, PA	07/11/17	07/10/17
93006	Swagelok Technology Services Company (State/One-Stop).	Erie, PA	07/11/17	07/10/17

159 TAA PETITIONS INSTITUTED BETWEEN 6/5/17 AND 8/18/17—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
93007	Commemorative Brands, Inc. (Company)	Austin, TX	07/12/17	07/11/17
93008	Conduent Business Services, LLC (State/One-Stop)	Rochester, NY	07/12/17	07/11/17
93008A	Conduent Business Services, LLC (State/One-Stop)	Webster, NY	07/12/17	07/11/17
93009	Graco Baby Division (Workers)	Exton, PA	07/12/17	07/11/17
93010	Trico Converting, Inc. (State/One-Stop)	Fullerton, CA	07/12/17	07/11/17
93011	GEICO (State/One-Stop)	Chevy Chase, MD	07/13/17	07/13/17
93012	Tata Consultancy Services (State/One-Stop)	Redmond, WA	07/13/17	07/11/17
93013	Contemporary Staffing Solutions (State/One-Stop)	Jacksonville, FL	07/14/17	07/13/17
93014	Pacific Coast Feather Company (State/One-Stop)	Des Plaines, IL	07/14/17	07/13/17
93015	Vertiv Co. (State/One-Stop)	Columbus, OH	07/14/17	07/13/17
93016	Flint Group Printing Systems US LLC (Union)	Huntington, WV	07/17/17	07/12/17
93017	Hearthmark, Inc. (State/One-Stop)	Cloquet, MN	07/17/17	07/14/17
93018	Associated Fuel Pump Systems Corporation (Company)	Anderson, SC	07/17/17	07/14/17
93018A	Human Technologies, Incorporated (Company)	Williamston, SC	07/17/17	07/14/17
93019	Diamond Foods (State/One-Stop)	Stockton, CA	07/18/17	07/17/17
93020	Meadowbrook Meat Company—Tracy (State/One-Stop)	Tracy, CA	07/18/17	07/17/17
93021	Durafiber Technologies (Company)	Grover, NC	07/19/17	07/18/17
93022	Durafiber Technologies (Company)	Salisbury, NC	07/19/17	07/18/17
93023	IBM Global Administration (State/One-Stop)	Littleton, MA	07/19/17	07/17/17
93024	International Business Machines (IBM) (State/One-Stop)	Research Triangle Park, NC	07/19/17	07/18/17
93025	SPIROL Ascutney (State/One-Stop)	Windsor, VT	07/19/17	07/18/17
93026	St. Vincent Health (Workers)	Indianapolis, IN	07/19/17	07/18/17
93027	ODU–USA, Inc. (State/One-Stop)	Camarillo, CA	07/20/17	07/19/17
93028	TATA Consultancy Services (State/One-Stop)	Midland, MI	07/20/17	07/19/17
93029	Experis–NA, Inc. (Workers)	Boise, ID	07/21/17	06/30/17
93030	Tronc, Inc. (State/One-Stop)	Lewisville, TX	07/21/17	07/20/17
93031	Continental Traffic Service Inc. (CTSI-Global) (State/One-Stop).	Memphis, TN	07/24/17	07/21/17
93032	Ditech Financial LLC (State/One-Stop)	St. Paul, MN	07/24/17	07/21/17
93033	Kmart Stores of Texas, LLC (State/One-Stop)	El Paso, TX	07/24/17	07/21/17
93034	Macy's Sunland Park Store (State/One-Stop)	El Paso, TX	07/24/17	07/21/17
93035	General Motors (GM) (Union)	Warren, MI	07/25/17	07/25/17
93036	Health Care Service Corporation (State/One-Stop)	Naperville, IL	07/25/17	07/24/17
93036A	Health Care Service Corporation (State/One-Stop)	Waukegan, IL	07/25/17	07/24/17
93037	TCF National Bank (Workers)	Sioux Falls, SD	07/25/17	06/28/17
93038	Pearson, Inc. (State/One-Stop)	San Antonio, TX	07/26/17	07/25/17
93039	Unum Group (State/One-Stop)	Chattanooga, TN	07/26/17	07/25/17
93040	Radio Frequency Systems (State/One-Stop)	Meriden, CT	07/27/17	07/26/17
93041	Teleflex/Wolf Tory, Inc. (Company)	Salt Lake City, UT	07/27/17	07/26/17
93042	Custom Control Sensors (State/One-Stop)	Chatsworth, CA	07/28/17	07/27/17
93043	Delft Blue LLC (Company)	New York Mills, NY	07/28/17	07/27/17
93044	Hartford Fire Insurance Company (State/One-Stop)	Hartford, CT	07/28/17	07/27/17
93045	TMCI Holdings Inc. (State/One-Stop)	Newark, NJ	07/28/17	07/27/17
93046	Optimas OE Solutions (State/One-Stop)	Erie, PA	07/31/17	07/28/17
93047	Trine Aspects LTD, (contracted by CitiBank) (State/One-Stop).	New York, FL	07/31/17	07/28/17
93048	Startek (Workers)	Tell City, IN	07/31/17	07/28/17
93049	Ecoshel (Company)	Ashland, ME	08/01/17	07/31/17
93050	Ormco d/b/a Allesee Orthodontic Appliances (AOA) (State/One-Stop).	Sturtevant, WI	08/01/17	07/31/17
93051	Pearson Education (Company)	Boston, MA	08/01/17	07/28/17
93052	Harman International (Company)	Richardson, TX	08/02/17	08/01/17
93053	JLM Couture, Inc. (State/One-Stop)	New York, NY	08/02/17	08/01/17
93054	Ulbrich Solar Technologies (State/One-Stop)	Hillsboro, OR	08/03/17	08/02/17
93055	Best Buy/Geeksquad (State/One-Stop)	Richfield, MN	08/03/17	08/02/17
93056	Microsoft (State/One-Stop)	Wilsonville, OR	08/03/17	08/02/17
93057	Diodes Fab Tech (State/One-Stop)	Lee's Summit, MO	08/04/17	08/03/17
93058	Hermiston Foods/NORPAC (State/One-Stop)	Hermiston, OR	08/04/17	08/03/17
93059	IBM (Workers)	Littleton, MA	08/04/17	08/03/17
93060	Commemorative Brands Inc. (State/One-Stop)	Austin, TX	08/07/17	08/04/17
93061	CPS Products (Star Enviro Tech Inc.) (State/One-Stop)	Huntington Beach, CA	08/07/17	08/04/17
93062	Delta Apparel, Inc. (Company)	Concord, NC	08/07/17	08/04/17
93063	JAE Oregon (State/One-Stop)	Tualatin, OR	08/07/17	08/04/17
93064	NGK-Locke Insulators, Inc. (State/One-Stop)	Baltimore, MD	08/07/17	08/04/17
93065	Oracle (State/One-Stop)	Hillsboro, OR	08/07/17	08/04/17
93066	Kalmar RT Center LLC (State/One-Stop)	Cibolo, TX	08/08/17	08/07/17
93067	Metalor Technologies (Company)	Export, PA	08/09/17	08/08/17
93068	Noble Energy (Workers)	Houston, TX	08/10/17	07/14/17
93069	Callidus/Honeywell (State/One-Stop)	Beggs, OK	08/11/17	08/10/17
93070	Symmetry Medical Inc. (State/One-Stop)	New Bedford, MA	08/11/17	08/10/17
93071	National Instruments (Company)	Austin, TX	08/14/17	08/11/17

159 TAA PETITIONS INSTITUTED BETWEEN 6/5/17 AND 8/18/17—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
93072	National Oilwell Varco (Workers)	Claremore, OK	08/14/17	08/09/17
93073	Norpac Foods Inc. (State/One-Stop)	Salem, OR	08/14/17	08/11/17
93074	Philips Medical Systems (Cleveland) Inc. (Company)	Aurora, IL	08/14/17	08/11/17
93075	Yanfeng US Automotive II LLC (Union)	Lansing, MI	08/14/17	08/11/17
93076	API Heat Transfer (Union)	Cheektowaga, NY	08/16/17	08/07/17
93077	Fargo Assembly of Mississippi, LLC (Workers)	Kosciusko, MS	08/17/17	08/16/17
93078	Health Care Service Corporation (State/One-Stop)	Downers Grove, IL	08/17/17	08/16/17
93079	Travelport (State/One-Stop)	Kansas City, MO	08/17/17	08/16/17
93080	Affinity Apparel (Workers)	Moultrie, GA	08/18/17	08/17/17
93081	Casamba (an affiliate of Source Medical) (Workers)	Rome, GA	08/18/17	08/17/17
93082	DART Aerospace (State/One-Stop)	Eugene, OR	08/18/17	08/17/17
93083	Hitachi Metals Automotive Components, LLC (State/One-Stop).	Wellsboro, PA	08/18/17	08/17/17

[FR Doc. 2017–20940 Filed 9–28–17; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prohibited Transaction Class Exemption 1998–54 Relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Prohibited Transaction Class Exemption 1998–54 Relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 30, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201707-1210-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the information collection requirements contained in Prohibited Transaction Class Exemption (PTE) 1998–54 that relates to certain employee benefit plan foreign exchange transactions executed pursuant to standing instructions. More specifically, the PTE permits certain foreign exchange transactions between employee benefit plans and certain banks and broker-dealers that are parties in interest with respect to such plans. In order that such transactions be consistent with Employee Retirement Income Security Act (ERISA) section 408(a), 29 U.S.C. 1108/(a), requirements, the PTE imposes the following conditions at the time the foreign exchange transaction is entered into: (a) The terms of the transaction must not be less favorable than those available in comparable arm's-length transactions between unrelated parties or those afforded by the bank or the broker-dealer in comparable arm's-length transactions involving unrelated parties; (b) neither the bank nor the broker-dealer has any discretionary authority with respect to the investment of the assets involved in the transaction; (c) the bank or broker-dealer maintains at all times written policies and procedures regarding the handling of foreign exchange transactions for plans for which it is a party in interest which ensure that the party acting for the bank or the broker-dealer knows it is dealing with a plan; (d) the transactions are performed in accordance with a written authorization executed in advance by an independent fiduciary of the plan whose assets are involved in the transaction and who is independent of the bank or broker-dealer engaging in the covered transaction; (e) transactions are executed within one business day of receipt of funds; (f) the bank or the broker-dealer, at least once a day at a time specified in written procedures, establishes a rate or range of rates of exchange to be used for the transactions covered by this exemption and executes transactions at either the next scheduled time or no later than twenty-four (24) hours after receipt of notice of receipt of funds; (g) prior to execution of a transaction, the bank or the broker-dealer provides the authorizing fiduciary with a copy of the applicable written policies and procedures for foreign exchange transactions involving income item conversions and *de minimis* purchases and sale transactions; (h) the bank or the broker-dealer furnishes the authorizing fiduciary a written confirmation statement with respect to each covered transaction within five (5) days of execution; (i) the bank or the broker-dealer maintains records necessary for

plan fiduciaries, participants, and the DOL and Internal Revenue Service to determine whether the conditions of the exemption have been met for a period of six years from the date of execution of a transaction. Internal Revenue Code of 1986 section 4975 and ERISA section 408 authorize this information collection. *See* 26 U.S.C. 4975; 29 U.S.C. 1108.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0111.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on September 30, 2017. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 22, 2017 (82 FR 23303).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0111. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Prohibited Transaction Class Exemption 1998–54 Relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions.

OMB Control Number: 1210–0111.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 35.

Total Estimated Number of Responses: 420,000.

Total Estimated Annual Time Burden: 4,200 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 15, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017–20916 Filed 9–28–17; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

[Agency Docket Number: DOL–2017–0003]

Request for Information on Potential Stay-at-Work/Return-to-Work Demonstration Projects

AGENCY: Office of Disability Employment Policy, DOL.

ACTION: Request for information.

SUMMARY: Washington State's workers' compensation system runs several promising early intervention programs including the Centers of Occupational Health and Education (COHE) and the Early Return to Work and the Stay at Work programs, which provide early intervention and return-to-work services for individuals with work-related health conditions and their employers. The *President's FY2018 budget proposed that* the Office of Disability Employment Policy (ODEP) at the U.S. Department of Labor (DOL) and the Social Security Administration (SSA) jointly conduct a demonstration testing the effects of implementing key features of these programs in other states and/or for a broader population beyond workers' compensation. To do that, we anticipate funding two to three states to operate projects with key elements drawn from the Washington State programs mentioned above, with an increased emphasis on access to employment-related supports, or fund the expansion of existing programs to include increased access to employment-related supports. The ultimate policy goal is to increase employment and labor force participation of individuals who have or are developing work disabilities. This request for information (RFI) seeks public input on how the proposed demonstration projects can best be designed to promote labor force attachment, coordinate employment and health services, and support injured and ill workers in returning to and remaining at work. The input we receive will inform our deliberations about the possible design of a future demonstration project.

DATES: Comments must be received by October 30, 2017.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please refer to Docket No. DOL–2017–0003in your comment pages so that we may associate your comments with the correct docket.

Caution: In your comments, you should be careful to include only the information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the ''Search'' function to find docket number DOL–2017–0003. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (202) 693–7888.

3. *Mail:* Mail your comments to the Office of Disability Employment Policy, U.S. Department of Labor, 200 Constitution Avenue NW., S–1303, Washington, DC 20210.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business

hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Jennifer Sheehy, Deputy Assistant Secretary, Office of Disability Employment Policy, U.S. Department of Labor, 200 Constitution Avenue NW., S–1303, Washington, DC 20210, (202) 693–7880, or visit *https://www.dol.gov/dol/contact/contact-phonecallcenter.htm* (TTY), for information about this notice.

SUPPLEMENTARY INFORMATION:

Purpose

Millions of American workers leave the workforce each year after experiencing an injury or illness.[1] Hundreds of thousands of these workers go on to receive state or Federal disability benefits.[2] Many injured or ill workers could remain in their jobs or the workforce if they received timely, effective supports.

This request for information (RFI) offers interested parties—including but not limited to states, community-based and other non-profit organizations, philanthropic organizations, researchers, employers, health care providers with assorted training and specialties, private disability insurance providers, vocational rehabilitation specialists, and members of the public—the opportunity to provide information and recommendations to inform the development of a potential grant program aimed at reducing long-term disability and increasing labor force participation among workers who are injured or become ill while employed.

Background

The *President's 2018 budget* supports a demonstration to test promising Stay-at-Work/Return-to-Work (SAW/RTW) strategies aimed at improving labor force participation, employment, and earnings outcomes for workers who are injured or become ill.

The proposed demonstration program is modeled after promising programs in Washington State including the Centers for Occupational Health and Education (COHE) [3] and the Early Return to Work [4] (ERTW) and Stay at Work programs.[5] Projects funded through the proposed demonstration project, however, would include additional connections to existing employment services and supports provided through the workforce development system.

COHE, which is funded by Washington's workers' compensation system, provides early intervention and RTW services for individuals with work-related health conditions. An evaluation of the COHE pilot in the early 2000s produced promising results: COHE participants were less likely to be off work and on disability benefits one year after the claim, and combined medical and disability costs were reduced by $510 per claim for COHE participants. The magnitude of these reductions was greater for back sprain cases (a common occupational injury): the relative risk of being off work and on disability at one year was 37 percent lower for back sprain COHE patients, and disability costs for back sprains were reduced by $542 per case.[6] Preliminary analysis indicated that at the eight-year mark, 26 percent fewer COHE claimants received Social Security Disability Insurance (SSDI) benefits.[7]

The ERTW program and Stay at Work programs in Washington State provide related assistance. The ERTW program helps injured and ill workers RTW as soon as medically possible by providing access to a team of vocational services consultants, therapists, and nurse consultants to assist with developing and implementing medically appropriate RTW options. The Stay at Work program is a financial incentive program that reimburses employers for some of their costs when providing temporary, light-duty jobs for injured workers while they heal.

This demonstration will draw from and test key features of the Washington COHE model and ERTW and Stay at Work programs, in other states and/or for a population beyond workers' compensation (*i.e.,* for non-occupational injuries and illnesses). To do that, we anticipate funding states to operate one or more COHE-style programs, or fund the expansion of existing programs, with an increased emphasis on access to employment-related supports. The ultimate policy goal is to increase employment and labor force participation of individuals with work disabilities, and to identify and/or confirm effective strategies for doing so. For the purposes of this RFI, the term ''work disability'' is defined as an illness, injury, or medical condition that is anticipated to inhibit or prevent continued employment or labor force participation.

This RFI offers interested parties the opportunity to provide recommendations on effective approaches for the design and implementation of the demonstration project. We expect that public input provided in response to this request will assist us in defining the scope and design of the demonstration project. For example, a demonstration project could test whether elements of the COHE workers' compensation model, which focus on immediate or early intervention, could be combined with re-employment services provided through the American Job Centers for the subset of participants who do not return to work within 90 days so that they could obtain additional employment services and supports to maintain a workforce attachment. The RFI specifically seeks public input on how the proposed demonstration projects can best be designed to promote labor force attachment, coordinate employment and health services, and support injured and ill workers in returning to and remaining at work.

Background on the COHE model and Early Return to Work and Stay at Work programs:

As the proposed demonstration is based on elements from Washington State's COHE, ERTW, and Stay at Work programs, the following background material is provided about these programs. There are six COHE centers across the state of Washington, including some housed in large medical systems and others that are community-based. Each of these centers [8] recruits and trains health care providers in their area—often orthopedists or other doctors specializing in treating workers' compensation (WC) patients. COHE started as a small pilot in two regions and has grown to currently include about 3,500 health care providers who cover about 60 percent of all WC claims in the state. Injured workers retain health care provider choice. They

[1] Bardos, Maura, Hannah Burak, and Yonatan Ben-Shalom. ''Assessing the Costs and Benefits of Return-to-Work Programs.'' Final report submitted to the U.S. Department of Labor, Office of Disability Employment Policy. Washington, DC: Mathematica Policy Research, March 2015.

[2] Social Security Administration, ''Annual Statistical Report on the Social Security Disability Insurance Program, 2015.'' SSA Publication No. 13–11826. Washington, DC: Social Security Administration, October 2016.

[3] *http://www.lni.wa.gov/ClaimsIns/Providers/ProjResearchComm/OHS/default.asp.*

[4] *http://www.lni.wa.gov/ClaimsIns/Insurance/Injury/LightDuty/Ertw/Default.asp.*

[5] *http://lni.wa.gov/Main/StayAtWork/.*

[6] Wickizer, T.M., Franklin, G., Fulton-Kehoe, D., Gluck, J., Mootz, R., Smith-Weller, T., and Plaeger-Brockway, R. (2011) ''Improving Quality, Preventing Disability and Reducing Costs in Workers' Compensation Healthcare: A Population-based Intervention Study.'' *Medical Care,* Vol. 49, No. 12, pp. 1105–1111.

[7] Franklin, G.M., Wickizer, T.M., Coe, N.B, and Fulton-Kehoe, D. (2015) ''Workers' Compensation: Poor Quality Health Care and the Growing Disability Problem in the United States.'' *American Journal of Industrial Medicine,* 58: 245–251.

[8] Grantees will not be required to establish a ''center'' or new entity as part of the demonstration.

receive COHE services if they choose a COHE-affiliated provider for their care.

Given that health care providers often see relatively few patients who are at risk of labor force separation due to their illness or injury, many may have limited knowledge and resources to address the employment-related needs of this population. Health care providers affiliated with COHE, however, receive training in occupational health best practices for these cases, including the following four best practices:

1. Submitting a complete Report of Accident (ROA) in two business days or less;

2. Developing an activity plan, which communicates the worker's ability to participate in work activities, activity restrictions, and the provider's treatment plans;

3. Communicating directly with employers when injured workers are absent or expected to be absent from work; and

4. Assessing the injured worker's barriers to return to work and developing a plan to overcome them.

Health service coordinators are integral to the success of the COHE model. The program is based on the MacColl chronic care model.[9] Successful health service coordinators are skilled in vocational rehabilitation and motivational interviewing and work directly with injured workers, employers, health care providers, and other stakeholders to coordinate care and RTW activities for injured workers. They also help stakeholders navigate the workers' compensation system by performing claim coordination functions, such as ensuring forms are received and complete and contacting stakeholders as needed for clarifications or follow-up. Health service coordinators frequently contact injured workers, employers, health care providers, state agency staff, and other stakeholders to help with the RTW process, and identify barriers to returning to work and resources to resolve them. The RTW activities they coordinate for the patient can include functional assessments, referrals to existing training and employment services, and setting appropriate RTW expectations. Health service coordinators also educate employers on the financial and other benefits of retaining injured workers and can refer employers to the ERTW and Stay at Work programs for resources and financial incentives to help them with job accommodation. The health service coordinators monitor all cases, but focus on those at risk for long-term disability, typically less than a quarter of all cases. The health service coordinator role is critical and depends heavily on the neutrality of health service coordinators in helping the health care and RTW system work effectively for patients, employers, health care providers, and the insurer. This neutrality allows health service coordinators to be trusted by the various stakeholders, allowing health service coordinators to maximize the likelihood of the best-case recovery and employment outcome.

As a program based in the medical system, COHE depends heavily on project champions among sponsoring health care organizations' leadership to create organizational buy-in and support. Additionally, each COHE participates in a Regional Business-Labor Advisory Board that ensures community support and solicits input from local business and labor interests.

Key features of the COHE model of interest to the proposed demonstration include:

1. Coordination of services, including enhanced stakeholder communication, RTW planning, and identification of potential delays and solutions to keep treatment and RTW plans on track;

2. Physician training on occupational health best practices;

3. Incentives for physicians to utilize the best practices for participating patients;

4. A data management system allowing services coordinators real-time access to all relevant information on each case to support effective triage, population monitoring, and case management.

The ERTW program helps injured and ill workers RTW as soon as medically possible by providing access to a team of specialists including vocational services consultants, therapist consultants, and nurse consultants who assist health care providers and employers develop and implement medically appropriate RTW options. Resources available to employers include risk management specialists, safety consultants to provide on-site consultations, and job modification funds. By providing these resources, the ERTW program speeds the worker's recovery and reduces the financial impact of a workers' compensation claim on the worker, the employer, and the workers' compensation system.

The Stay at Work program incentivizes employers to offer temporary light-duty work to injured employees while they heal, by reimbursing the employers for some of the costs of providing such jobs. Eligible employers can be reimbursed for 50 percent of the base wages they pay the injured worker and some of the cost of training, tools, or clothing the worker needs to do the light-duty or transitional work.

The COHE model focuses services on the first 12 weeks after injury because this period is most critical in maximizing the likelihood of RTW. While the proposed demonstration builds upon the COHE model and the ERTW and Stay at Work programs, it differs from the original model by adding an extended focus on employment services and supports and a strong and purposeful involvement of the workforce development system.

Potential Project Scope

DOL and SSA anticipate three acquisitions for this project: Implementation grants awarded via a cooperative agreement, a technical assistance contract to support grantees, and an evaluation contract. The agencies anticipate implementing the demonstration in two to three states representing diverse programmatic contexts and with the ability to provide meaningful analyses and policy recommendations. There would be a separate technical assistance (TA) contract to assist states with implementation and a separate integrated evaluation contract to evaluate all of the sites and address specific research goals. For the purposes of this RFI, the implementation grantees are referred to as the ''projects,'' the technical assistance contractor is referred to as the ''TA provider,'' and the evaluation contractor is referred to as the ''evaluator.''

We anticipate designing this demonstration to solicit innovative projects that create systems changes by targeting individuals when they are in the early stages of developing a work disability, and assisting them in maintaining a connection to the labor force, preferably through their current or most recent employer. Projects will be encouraged to build upon existing programs or systems, such as state-based temporary disability insurance (TDI) programs, collaborative health care organizations, disability management insurance providers, or workers' compensation programs. We would also encourage projects to think broadly about new and effective ways to prevent the development of long-term work disability. The solicitation will leave flexibility for applicants to develop their own projects that adapt to the specific programmatic, demographic, and economic contexts of their state or region while also satisfying the project's requirements.

[9] See *http://www.improvingchroniccare.org/index.php?p=The_Chronic_Care_Model&s=2.*

Preliminary required design elements of the demonstration are described below. We encourage public input and comment on these elements in response to the questions in the following section.

Overview: We anticipate funding implementation grants in two to three states to either operate one or more projects with key elements drawn from the COHE model and the ERTW and Stay at Work programs, with an added emphasis on access to employment-related services and supports, or the expansion of similar existing programs to include increased access to employment-related supports and services. The ultimate policy goal is to increase employment and labor force participation of individuals with work disabilities through timely and effective coordination of health care and employment-related services. Each grantee would be responsible for identifying, recruiting, and training health care providers within their geographic area, and incentivizing their use of occupational health best practices for eligible workers. In addition, each grantee would be responsible for providing and supporting return to work service coordinators who will coordinate and facilitate the RTW process for eligible workers. Grantees would also be responsible for providing a centralized data collection and reporting system for the efficient management of the care and RTW coordination system, and to support the evaluation of the program.

We anticipate requiring funded projects to include the following treatment elements:

- Coordination of services, including enhanced stakeholder communication, RTW planning, and identification of potential delays and solutions to keep treatment and RTW plans on track;
- Health care provider training on occupational health best practices that COHE uses;
- Incentives for health care providers to utilize the specified best practices for participating patients;
- Possible incentives for employers to actively participate in worker retention and other RTW efforts through utilization of strategies such as temporary light-duty jobs, job modifications, and job-banking;
- Provision of, or facilitated access to, employment-related services and supports (such as needs assessments, skill assessments, accommodations, job coaching, job search assistance if not remaining with original employer) and training;
- Engaging key stakeholders (*e.g.,* the business community, labor representatives) up front and on an ongoing basis; and
- A data management system that:
  - (1) allows service coordinators real-time access to all relevant information on each case for purposes of triage, individual case management, and population health monitoring, including on disability time loss duration; and
  - (2) supports the evaluation of the project.

Eligible grant applicants: We anticipate requiring each project and application to have a state agency designated as the lead coordinating entity. The lead agency would be required or encouraged to form partnerships with other public or private organizations, such as DOL-funded employment-service providers, state vocational rehabilitation agencies, private non-profit organizations, health care providers/organizations, other public or private organizations, state and local Workforce Investment Boards, and county or municipal-level governments as appropriate.

Population: Each project would be required to identify and clearly define its target population, including showing that the population has a substantial risk of developing a long-term work disability, and/or transitioning to Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), such that the intervention could change their employment outcomes. Projects are encouraged to include workers with active state TDI or workers' compensation claims, or those using paid leave, as well as broader populations of workers experiencing the onset of a medical condition that could result in a work disability. The target population must be clearly identifiable using existing administrative records, easily completed screening forms, or an information management system, and there must be a clear mechanism that triggers the start of services.

Participant Recruitment: Each grantee would propose a recruitment plan for outreach and enrollment of worker participants based on their target population and their project design. Grantees would be required to be able to recruit a sufficient number of worker participants to allow for a meaningful assessment of the impact of the intervention. Applicants would also be required to recruit and have signed MOUs or letters of intent with project partners, including partnering health care providers.

Evaluation Design: We anticipate carrying out an impact and implementation study to understand how the programs are implemented, service components, who is being served, the extent to which those served experience improved outcomes (including labor market outcomes, receipt of SSDI/SSI), and a cost-benefit analysis. The impact study would include a process evaluation and participation analysis in order to assess the implementation and fidelity of the program and general interest and take-up rates across the project sites. The evaluation design would be finalized once the evaluator is secured and would take into account the specifics of the funded projects. All projects would be required to fully cooperate with and participate in the evaluation.

Data collection: Projects would be required to provide for centralized data collection to capture care management, RTW coordination information, and measures and outcomes of interest to the evaluation. The evaluation contractor would be provided access to this data. A data management system would be required to allow the service coordinators and others in the intervention to have real-time access to all relevant information on each case in order to effectively triage, monitor, and intervene as needed on a timely basis. Projects would be encouraged to use or adapt existing centralized data systems.

Evaluation: We anticipate evaluating projects on two primary research questions:

- Does the intervention improve employment outcomes compared to the control group?
- Does the intervention reduce application to Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI)?

Below are additional research questions of interest, which may not all be answered by the initial evaluation of the proposed demonstration:

- Does the intervention increase labor force participation of participating workers?
- Does the intervention increase labor force attachment of participating workers?
- Does the intervention reduce labor force exit of participating workers?
- Does the intervention maintain or result in increased wages of participating workers?
- Does the intervention improve the ability of participating workers to maintain hours of work?
- Does the intervention reduce medical, time lost, or litigation costs?
- What are optimal and efficient methods to identify target populations at risk of exiting the labor force that will benefits from the intervention?
- What is the best timing to engage a worker effectively while also minimizing cost?

- What recruitment methods are most effective to engage a target population?
- Does the intervention decrease SSDI or SSI allowance rates?
- What elements of the intervention are most influential in determining success (*i.e.,* improved employment outcomes and reduced need for SSDI or SSI benefits)?
- What environmental factors are necessary for successful implementation of the intervention?
- What are the cost effective and efficient interventions that reduce workers exit from the labor force?
- What are the effective and efficient strategies to incentivize employers to actively retain workers with injuries and health conditions?
- What are effective and efficient strategies to create buy-in from health care providers that work is an important health care outcome?

Request for Information

This request for information (RFI) seeks public input on how the proposed demonstration projects can best be designed to promote labor force attachment, coordinate employment and health services, and support injured and ill workers in returning to and remaining at work. Through this notice, we are soliciting feedback from interested parties on the scope and design of a potential demonstration project related to providing coordinated occupational health and employment services to individuals who become injured or ill while employed in order to enable them to remain in the labor force, thereby improving their employment and earnings outcomes and maximizing their self-sufficiency. Responses to this request will inform decisions about the development, design, and evaluation of the potential demonstration project.

This notice is for internal planning purposes only and should not be construed as a solicitation or as an obligation on the part of the Department of Labor or any participating Federal agencies. We ask respondents to address the following questions, where possible, in the context of the discussion in this document. You do not need to address every question and should focus on those that relate to your expertise or perspectives. To the extent possible, please clearly indicate which question(s) you address in your response. We ask that each respondent include the name and address of his or her institution or affiliation, if any, and the name, title, mailing and email addresses, and telephone number of a contact person for his or her institution or affiliation, if any.

Questions

I. Intervention Elements

1. Are there potential issues with the treatment elements listed under ''required treatment elements'' on pages 6–7? Should any *not* be required? What other elements might be useful, and what is the evidence base for them? What additional optional services and supports could grantees choose to include in the model? What is the existing evidence documenting the effectiveness of these additional optional services and supports?

2. What should be the required and optional roles and responsibilities of the RTW service coordinator in implementing the treatment elements?

3. Where should the role of a RTW service coordinator be housed in order to most effectively accomplish its goals, including an ability to maintain neutrality? For example, should service coordinators be employed by health care provider networks, by the public workforce system, by private disability insurance providers, by employers, or by another entity?

4. Should there be educational and/or experience requirements for the RTW service coordinators, such as vocational counseling or public health backgrounds? How should these educational and experience requirements parallel and differ from those of health navigators, community health workers, and vocational rehabilitation counselors?

5. What specific employment-related interventions should be required or allowed? What evidence supports these interventions as effective in early intervention for these populations? When referrals to existing employment-related service providers occur, will these providers have sufficient capacity and funding to provide services in a timely manner to referred individuals?

6. The COHE model focuses interventions primarily in the first 12 weeks after injury/illness (with occasional exceptions allowing up to 26 weeks). For a demonstration such as this requiring increased involvement of the workforce development system, what is the optimal timing and length of intervention? Why, or what is the evidence base?

7. Employment services (such as needs assessments, skill assessments, accommodations, job coaching, job search assistance if not remaining with original employer) and the public workforce system are important elements of the proposed demonstration program. What is the optimal time to provide employment services? For example, should employment services be provided during the same time window as the health care services/coordination, or afterwards? How can the RTW service coordinators best facilitate the effective use of employment services?

8. What role should employer incentives play in this intervention? Are there particular employer incentives that we should consider in projects where workers' compensation insurance premiums play a limited role? Are there effective non-financial ways to engage and incentivize employers to support and implement SAW/RTW programs within their workplaces?

9. What is an appropriate health care provider payment or fee structure to incentivize the specific occupational health best practices and to encourage a focus on employment as a health outcome? Are there models other than fee-for-service that would be appropriate and feasible, such as basing payments on process and/or outcome metrics? How would these models operate in the context of managed-care organizations?

10. How can health systems and health care providers be better incentivized to consider employment a valid health outcome? What is the recent relevant evidence documenting the effectiveness of incentive models (including financial or other incentives) that include employment as an outcome?

II. Target Population and Sites

11. What is an appropriate age range of participants to target for this demonstration project? For example, should the demonstration projects target prime-age workers (25–54)? Why or why not?

12. What populations of RTW participants—such as those listed below—should be allowed, encouraged, or required in the demonstration? Why should the populations you recommend be included? Are there populations of RTW participants that you would not recommend?

- Individuals with active state-based TDI claims?
- Workers accessing FMLA benefits (except for pregnancy and caring for others)?
- Individuals with active WC claims?
- Others (not participating in WC or TDI) experiencing the onset of a medical condition that could affect their connection to the workforce?

13. How should the target population described above be specifically defined and cleanly identified? We are particularly interested in how to define an appropriate population that is not limited to individuals with state-based

TDI claims or WC. What are the most appropriate eligibility criteria (such as time off work, type of condition, type of employment) to identify such individuals? What kinds of ''triggers'' would work for the population as a mechanism for enrollment into the project?

14. Are there specific functional risk assessment instruments that you recommend using for this project? What are the benefits and limitations of those instruments? How might they be used to identify the target population here or form the basis for an RTW plan?

15. Are there aspects of your state's TDI, paid leave, FMLA, WC, or other state programs that would pose particular advantages or challenges for identifying workers who might benefit from an intervention like the one discussed above? Are there aspects of these programs that would pose particular advantages or challenges for collecting data on treatments, services, and outcomes for a project like this?

16. Should the target population be limited to individuals with certain types of medical conditions, such as musculoskeletal conditions and chronic health conditions? Why or why not?

17. How should project service areas be defined? For example, should demonstrations be carried out statewide, in specific counties, regions, or local communities? Would these service areas have a large enough target population for evaluation purposes?

18. What types of entities would be the most beneficial to consider partnering with to provide the COHE-style services, and why? Examples could include large health-care systems, collections of small health care provider offices, private self-insured employers with in-house disability management, vocational rehabilitation providers, accountable or managed care organizations, federally qualified community health centers, community based organizations, and urgent care centers.

III. Eligible Applicants

19. What types of state government entities are the most logical or well-positioned to serve as the primary applicant and fiscal agent? What is the best way to organize the structure of a demonstration like the one described above in your state? What structure would best enable effective leadership, responsibility, and accountability for the project? Would a single agency be the natural lead for the project?

20. Similar state functions may be housed in different agencies, depending on the state. Should key functions be required, rather than specific agencies? If so, what functions should be required?

21. Should groups of states be allowed to jointly apply? Why or why not?

22. Could a non-state (*i.e.,* county or local government) or non-governmental (*i.e.,* non-profit or private organization) entity serve as the primary applicant and fiscal agent? If so, what characteristics should be required of such entities? Would this be preferable to a state governmental agency serving in this role? Why or why not?

23. The COHE model in Washington operates within a monopolistic WC system, which allows for centralized participant controls, service management, and data collection. Would states with other WC models, such as privately managed and competitive WC markets, be able to feasibly implement a similar model, particularly with regard to data collection? If so, how? Would states with short-term or temporary disability insurance programs or states with mandatory paid sick leave be able to do so, and how? In other words, should grant applicants be limited to states with specific characteristics, and why or why not?

24. What partners, public or private, should be required or encouraged as part of the demonstration project? What other entities might be beneficial as collaborators? In what ways could they assist?

IV. Evaluation and Design Issues

25. Are there research questions, not specified above, that could be answered through the evaluation which would improve understanding of ways to better serve and increase employment and labor force participation of individuals with work disabilities?

26. What entity would be most successful in recruiting participants who have a qualifying injury or health condition (that makes them at risk for leaving the labor force)? Examples could include an insurance company, state TDI or WC insurance providers, an employer, or a health care provider.

27. Do health systems and/or health care providers utilize risk predictors to target specific types of services? If so, which predictors are used, and for which services? Are any employment- or SAW/RTW-related?

28. If a cluster-randomized design is used for an experimental impact evaluation, how could the unit of randomization be defined and operationalized within various types of grantee sites? Are there other evaluation designs (randomized or not) that would be more feasible (*e.g.* quasi-experimental design)? If so, how could a potential comparison group be identified? If other randomized designs are recommended, what are potential units for random assignment and points at which assignment would occur?

Rights to Materials Submitted

By submitting material in response to this notice, you agree to grant us a worldwide, royalty-free, perpetual, irrevocable, nonexclusive license to use the material, and to post it publicly. Further, you agree that you own, have a valid license, or are otherwise authorized to provide the material to us. You should not provide any material you consider confidential or proprietary in response to this notice. We will not provide any compensation for material submitted in response to this notice.

Jennifer Sheehy,

Deputy Assistant Secretary for Disability Employment Policy.

[FR Doc. 2017–20338 Filed 9–28–17; 8:45 am]

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LEGAL SERVICES CORPORATION

Notice to LSC Grantees of Application Process for Subgranting 2017–2018 Pro Bono Innovation Fund and Technology Initiative Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Notice of application dates and format for LSC Technology Initiative Grants and Pro Bono Innovation Fund subgrant applications.

SUMMARY: The Legal Services Corporation (LSC) announces the submission dates for applications for subgrants under its Technology Initiative Grants and its Pro Bono Innovation Fund grants starting after October 30, 2017. LSC is also providing information about the location of subgrant application forms and directions.

DATES: See **SUPPLEMENTARY INFORMATION** section for application dates.

ADDRESSES: Legal Services Corporation—Office of Compliance and Enforcement, 3333 K Street NW., Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: Office of Compliance and Enforcement by email at *subgrants@lsc.gov,* or visit the LSC Web site at *http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant.*

SUPPLEMENTARY INFORMATION: LSC revised its subgrant rule, 45 CFR part 1627, effective April 1, 2017. The revised rule requires LSC to publish, on an annual basis, ''notice of the requirements concerning the format and

contents of the [subgrant] application annually in the **Federal Register** and on its Web site.'' 45 CFR 1627.4(b). This Notice and the publication of the Subgrant Application Forms on LSC's Web site satisfies § 1627.4(b)'s notice requirement for the Technology Initiative Grant and Pro Bono Innovation Fund grant programs. Only current or prospective LSC grantees may apply.

Applications for subgrants of Technology Initiative Grant and Pro Bono Innovation Fund grant funds with starting dates after October 30 must be submitted at least 45 days in advance of the subgrant's proposed effective date. 45 CFR 1627.4(b)(2). LSC grantees may subgrant up to $20,000 in LSC funds without submitting an application for prior approval. 45 CFR 1627.4(b). All subgrants of LSC funds, however, are subject to LSC's regulations, guidelines, and instructions.

Subgrant applications must be submitted at *https://lscgrants.lsc.gov.* Applicants may access the application under the ''Subgrants'' heading on their ''LSC Grants'' home page. Applicants may initiate an application by selecting ''Initiate Subgrant Application.'' Applicants must then provide the information requested in the LSC Grants data fields, located in the Subrecipient Profile, Subgrant Summary, and Subrecipient Budget screens, and upload the following documents:

- A draft Subgrant Agreement (with the required terms provided in the Technology Initiative Grants and Pro Bono Innovation Fund Subgrant Agreement Template (''Template'');
- Responses to Technology Initiative Grants and Pro Bono Innovation Fund Subgrant Inquiries;
- The subrecipient's accounting manual (or letter indicating that the subrecipient does not have one and why);
- The subrecipient's most recent audited financial statement (or letter indicating that the subrecipient does not have one and why);
- The subrecipient's most recent Form 990 filed with the Internal Revenue Service (or letter indicating that the subrecipient does not have one and why);
- The subrecipient's current fidelity bond policy (or letter indicating that the subrecipient does not have one and why);
- The subrecipient's conflict of interest policy (or letter indicating that the subrecipient does not have one and why); and
- The subrecipient's whistleblower policy (or letter indicating that the subrecipient does not have one and why).

Technology Initiative Grants and Pro Bono Innovation Fund Subgrant Agreement Template and Inquiries are available on LSC's Web site at *http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant.* LSC encourages applicants to use the Template provided to draft their subgrant agreement(s). If the applicant does not use the Template, the proposed agreement must include, at a minimum, the substance of the provisions in the Template. LSC recommends that applicants pay careful attention to the terms included in, and instructions on, the Template. Several of the terms have been modified from previous years and new terms have been added.

Once submitted, LSC will evaluate the application and provide applicants with instructions on any needed modifications to the information, documents, or Draft Agreement provided with the application. The applicant must then upload a final and signed subgrant agreement through LSC Grants. This can be done by selecting ''Upload Signed Agreement'' to the right of the application ''Status'' under the ''Subgrant'' heading on an applicant's LSC Grants home page.

As required by 45 CFR 1627.4(b)(3), LSC will inform applicants of its decision to disapprove, approve, or request modifications to the subgrant no later than the subgrant's proposed effective date.

Dated: September 25, 2017.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2017–20865 Filed 9–28–17; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 17–CRB–0011–SD (2015)]

Distribution of 2015 Satellite Royalty Funds

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Notice requesting reply comments.

SUMMARY: The Copyright Royalty Judges solicit reply comments on a motion of Allocation Phase claimants for partial distribution of 2015 satellite royalty funds.

DATES: Reply comments are due on or before October 30, 2017. Surreplies from original commenters are due on or before November 8, 2017.

ADDRESSES: You may make replies and surreplies, identified by docket number 17–CRB–0011–SD (2015), by any of the following methods:

CRB's electronic filing application: Submit comments online in eCRB at *https://app.crb.gov/.*

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE. and D Street NE., Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000.

Instructions: Unless submitting online, commenters must submit an original, five paper copies, and an electronic version on a CD. All submissions must include the CRB's name and docket number. All submissions will be posted without change to eCRB on *https://www.crb.gov* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 17–CRB–0011–SD (2015). For documents not yet uploaded to eCRB (because it is a new system), go to the agency Web site at *https://www.crb.gov/* or contact the CRB Program Specialist.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On February 17, 2017, representatives of all the Allocation Phase claimant categories (formerly ''Phase I'') [1] filed with the Judges a motion requesting a partial distribution amounting to 60% of the 2015 satellite royalty funds pursuant to section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). That section requires that, before ruling on the

[1] The ''Allocation Phase Claimants'' are Program Suppliers, Joint Sports Claimants, Broadcaster Claimants Group, Music Claimants (represented by American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), and Devotional Claimants.

motion, the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive the subject royalties has a reasonable objection to the requested distribution.

On April 17, 2017, the Judges published a notice in the **Federal Register** seeking comments on the motion.[2] The Judges received two comments on the motion, both of which opposed the partial distribution as proposed. In particular, one commenter contended that two of the parties seeking a partial distribution had not provided a means to permit proper identification of those claimant representatives and that neither of the claimant representatives was an established claimant with respect to satellite funds and therefore were precluded by applicable precedent from receiving a partial distribution of satellite royalties. On June 9, 2017, the Devotional Claimants filed a motion for leave to file reply comments to the objection of the Multigroup Claimants. *Motion of Devotional Claimants for Leave to File Reply to Multigroup Claimants' Objection to Partial Distribution of 2015 Satellite Royalty Funds to Certain* ''*Allocation Phase Parties.*'' In light of this motion and the comments submitted on the filing, the Judges request reply comments that respond to any issues the commenters raised with respect to the motion for partial distribution and that address whether or not any commenter raised a reasonable objection to the proposed partial distribution and if not, why not.[3]

In addition, the Judges permit either of the original commenters to offer surreply to any reply comments the Judges receive. Reply comments must be filed no later than 30 days after the publication of this notice in the **Federal Register**. Surreplies, if any, must be filed no later than ten days after the deadline for filing reply comments.

The Motion of the Allocation Phase Claimants and the comments are posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

Dated: September 26, 2017

Suzanne M. Barnett,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2017–20926 Filed 9–28–17; 8:45 am]

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[2] 82 FR 18160.

[3] Given the Judges' general request for reply comments, the Judges DENY the Devotional Claimants' motion as moot.

LIBRARY OF CONGRESS

U.S. Copyright Office

[Docket No. 2017–14]

Compendium of U.S. Copyright Office Practices

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

ACTION: Update to Compendium of U.S. Copyright Office Practices, Third Edition.

SUMMARY: The U.S. Copyright Office is announcing the release of an update to its administrative manual, the *Compendium of U.S. Copyright Office Practices, Third Edition,* which goes into effect as of September 29, 2017.

DATES: The final updated version of the *Compendium of U.S. Copyright Office Practices, Third Edition* is available on the Office's Web site as of September 29, 2017.

FOR FURTHER INFORMATION CONTACT: Erik Bertin, Deputy Director for Registration Policy and Practice, Sarang Damle, General Counsel and Associate Register of Copyrights, Regan A. Smith, Deputy General Counsel, or Catherine Zaller Rowland, Senior Advisor to the Register of Copyrights, all by telephone at (202) 707–8350.

SUPPLEMENTARY INFORMATION: The *Compendium of U.S. Copyright Office Practices, Third Edition* (''*Compendium*'') is the administrative manual of the U.S. Copyright Office. It ''explains many of the practices and procedures concerning the Office's mandate and statutory duties under title 17 of the United States Code.'' 37 CFR 201.2(b)(7). ''It is both a technical manual for the Copyright Office's staff, as well as a guidebook for authors, copyright licensees, practitioners, scholars, the courts, and members of the general public.'' *Id.* While it has been a guiding manual for the Copyright Office for several decades, the Office conducted a comprehensive revision of the entire *Compendium* beginning in 2011, which was completed in December 2014 and resulted in the Third Edition. 79 FR 78911 (Dec. 31, 2014).

To ensure that the *Compendium* remains up to date, the Office monitors the law and Office practices. After conducting this analysis with regard to the 2014 version, the Office released a draft revision to the *Compendium* on June 1, 2017 (the ''Public Draft''). The Office posted the Public Draft on its public Web site and invited comments until July 30, 2017. The draft included proposed revisions to the registration chapters that clarified, among other things: how and when the Office communicates with applicants; and how it handles duplicate claims, deposit requirements, and claims involving multiple works. The Public Draft also sought to provide preliminary guidance for claims involving useful articles based on the Supreme Court's recent decision in *Star Athletica, L.L.C.* v. *Varsity Brands, Inc.,* 137 S. Ct. 1002 (2017). Revisions to the recordation chapter provided additional guidance for recording notices of termination, as well as information on the Office's new electronic system for designating agents for online service providers. 81 FR 75695 (Nov. 1, 2016). The Public Draft also explained recent regulatory changes that impact post-registration procedures, including the new ''mailbox rule'' for calculating dates in requests for reconsideration and new procedures for removing personally identifiable information. 81 FR 62373 (Sept. 9, 2016); 82 FR 9004 (Feb. 2, 2017). The update also incorporated changes made by the recent technical amendments to the Office's regulations. 82 FR 12180 (Mar. 1, 2017). An archived copy of the Public Draft is available on the Office's Web site.

The Office received comments on the Public Draft from the Copyright Alliance, the Intellectual Property Owners Association (''IPO''), the Kernochan Center for Law, Media, and the Arts at Columbia Law School, as well as four individuals. After carefully reviewing these comments, the Office decided to further revise twenty-one sections of the Public Draft, resulting in a final update (the ''Final Version''), as discussed in more detail below. Additionally, the Final Version reflects rulemaking activity that post-dated the Public Draft, including the Office's final rules on supplementary registration and group registration for contributions to periodicals. 82 FR 27424 (June 15, 2017); 82 FR 29410 (June 29, 2017).[1] It includes a revised Chapter 1700 that reflects the Office's new practice for amending a claim during the course of a request for reconsideration. In addition, the Office will not adopt the position in the Public Draft that, when an application deposit consists of only one copy when two are required, the effective date of registration would be based on the date the second copy was received. This would have been a departure from the Office's current

[1] The Final Version does not include the Office's recent interim rule on secure tests, because the deadline for submitting comments in that proceeding does not expire until December 11, 2017. 82 FR 26850 (June 12, 2017).

practice, and the Office has decided to maintain its current practice (described in Chapters 600 and 1500 of the 2014 version). A complete list of all sections that have been added, amended, revised, or removed is available on the Office's Web site at *https://www.copyright.gov/comp3/revisions.html,* along with redlines that provide a direct comparison between the Final Version and the 2014 version of the *Compendium.*

Revisions to the Public Draft reflected in the Final Version are as follows:

Applicability of the 2017 Update to the Compendium

In response to a suggestion from IPO, the Office amended the Introduction to confirm that applications and documents registered or recorded on or after September 29, 2017, will be governed by the Final Version. The Introduction also confirms that registrations and recordations that are issued by the Office before that date will generally be governed by the 2014 version of the *Compendium,* except in cases where that version had been superseded by an amendment to the regulations, intervening case law, or previously announced changes in practice.

Email Communication With the Office

If an applicant provides an email address in the application, the Office will use that address as the primary means for communicating with the applicant, even if the applicant also provides a telephone number or other contact information. As the Copyright Alliance noted, applicants do not need to provide a personal email address or designate a specific person to receive emails from the Office. The Office will accept communications from a general email address that may be used by multiple people within the same organization, such as ''copyrightadministrator@publisher.com.'' *See* Final Version, section 605.2.

Best Edition Requirement

Sections 1504.2 and 1509.2(B)(3) of the Final Version clarify that an applicant may submit a digital copy of a work if it was published solely in a digital form in the United States—even if that work was published in another country in a physical form. This responds to the Copyright Alliance's concern that it may be too burdensome to obtain physical copies from an overseas distributor, especially if a digital copy is readily available in this country.

Disclaiming Preexisting Material

When an applicant submits a work that contains previously published material, the applicant is generally expected to exclude that material from the claim.[2] The Public Draft summarized the legal and policy justifications for this longstanding practice. It also explained that this practice applies regardless of whether the previously published material was authored by the copyright claimant or a third party. *See* Public Draft sections 503.5, 507.2.

IPO contended that these revisions are inconsistent with the weight of legal authority holding that a registration for a derivative work may be used to enforce the copyright in a preexisting version of the same work, even if the preexisting version has been previously published and has not been separately registered with the Office. IPO also contended that the revisions to these sections will increase the complexity of registering and enforcing the copyright in derivative computer programs, and will discourage software companies from registering their works.

After considering the IPO's comments, the Office agrees that this issue warrants further study. Therefore, the changes proposed in sections 503.5 and 507.2 of the Public Draft will not be adopted at this time. The Office also removed the phrase ''the version that is being registered'' from sections 1509.1(C)(2) and 1509.1(C)(4)(b) of the Public Draft.[3]

The Office intends to revisit this issue in the future through a formal notice of inquiry. Until the Office has concluded that public process, the Office will maintain its current practices for examining these types of claims. In the meantime, applicants should continue to add a disclaimer if a work contains an appreciable amount of previously published material, and if applicants do not exclude this type of material, the Office will continue to communicate when an appropriate disclaimer is needed.

Computer Programs

IPO expressed concern that a change made in the Public Draft would require applicants to expressly claim ''non-executing comments'' in the application in order to register that aspect of a work. *See* Public Draft sections 721.7, 721.9(F). IPO stated that software developers consider non-executing comments to be an integral part of a computer program.

The Final Version confirms that the term ''computer program'' may be used to assert a claim in both the executable code and non-executing comments within a computer program. It also confirms that applicants may register both elements by checking the box marked ''computer program,'' or by checking that box and expressly stating ''non-executing comments'' in the application.[4] *See* Final Version sections 618.4(C), 721.7, 721.9(F).

IPO also expressed concern that the Office may cancel a registration if ''a court determines that an applicant submitted redacted source code or object code that does not contain trade secret material.'' Public Draft, section 1509.1(C)(4)(b). The regulations state that an applicant may only submit redacted source code or object code if the program contains trade secret material. *See* 37 CFR 202.20(c)(2)(vii)(A), (B). The regulations also state that the Office may cancel a registration if it ''becomes aware that . . . [the] correct deposit material has not been deposited.'' 37 CFR 201.7(c)(4). However, the Final Version confirms that before doing so, the Office will ask the claimant to resubmit an appropriate deposit. It also clarifies that the Office will cancel a registration only if the Office does not receive a response within 30 days, or if the claimant's response does not resolve the problem.[5] *See* Final Version section 1509.1(C)(4)(b).

Choreographic Works and Pantomimes

In response to comments submitted by the Kernochan Center,[6] the Office

[2] In particular, applicants should add a disclaimer if the work contains an ''appreciable'' amount of previously published material. This requirement was stated throughout the 2014 version of the *Compendium. See, e.g., Compendium,* sections 311.2, 507.2, 508.2, 618.2, 618.5, 618.6, 618.7, 621, 621.1—621.9 (3d ed. 2014). But in a few places the Office inadvertently used the word ''substantial'' in place of the word ''appreciable.'' *See id.* sections 712.3, 715.3, 717, 717.2, 718, 721.9(G), 727.3(D). The Public Draft corrected these oversights, and contrary to IPO's suggestion, these corrections do not represent a change in the Office's current policy.

[3] The language appearing in the corresponding sections of the 2014 version will be retained for the time being. But to be clear, the Office retained some minor changes made in these sections, such as those discussed in footnote 2, and changes in section 721.8 that do not involve the prior-publication issue.

[4] At IPO's suggestion, the Final Version discourages applicants from using the term ''text'' to describe non-executing comments, because that term is potentially ambiguous.

[5] At IPO's suggestion, the Office retained language from the 2014 version of the *Compendium* stating that ''[t]he applicant *should not* block out any portions of the source code that do not contain trade secret material.'' Final Version section 1509.1(C)(4)(b) (emphasis added).

[6] At the Kernochan Center's suggestion, the Office also revised one of the examples in section 906.4 of the Public Draft to clarify that calligraphy is a

removed ''competitive ice skating,'' ''synchronized swimming,'' ''parades,'' ''marching band routines,'' ''magic acts,'' ''circus acts,'' and ''juggling'' from the examples of physical activities that cannot be registered as a pantomime or a choreographic work. If the Office receives claims involving these types of activities in the future, they will be evaluated on a case-by-case basis. *See* Final Version sections 805.5(B)(3), 806.5(B)(5).[7]

Notices of Termination Under Section 203 of the Copyright Act

Section 203(a)(3) of the Copyright Act provides that, if a grant ''covers the right of publication of the work,'' the period for terminating that grant ''begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.'' 17 U.S.C. 203(a)(3). The 2014 version of the *Compendium* took the position that the ''date of publication'' is the date the work is published ''under the grant,'' and acknowledged that the date of publication under a particular grant may or may not be the date the work was published for the first time. *See Compendium* sections 2310.3(C), 2310.3(C)(2) (3d ed. 2014).

The Public Draft amended these sections to reflect the approach adopted by a Second Circuit case, *Baldwin* v. *EMI Feist Catalog, Inc.,* 805 F.3d 18, 33 (2d Cir. 2015). Specifically, the draft stated that the phrase ''date of publication'' means the date the work was published for the first time. *See* Public Draft sections 2310.3(C), 2310.3(C)(1), 2310.3(C)(2), 2310.3(D)(1), 2310.3(D)(1)(a). The Copyright Alliance contended that this interpretation is not supported by the statute or the legislative history, and urged the Office to retain the corresponding language from the 2014 version of the *Compendium.*

After further consideration, the Office agrees that the 2014 version represents the better reading of section 203(a)(3), and is not prepared to follow *Baldwin* in light of the limited jurisprudence on this matter. This reading is supported by both the language and structure of the statute. The terms ''first published'' and ''first publication'' are used in multiple sections of the Copyright Act, including sections 101, 104, 104A, 302, 401, 402, 406, 408, 409, 410, and 412. Presumably, Congress would have used the same terminology in section 203(a)(3) if that provision only applied to grants that convey the right to publish a work for the first time.

Indeed, the termination provision in an early copyright reform bill did provide that ''if the grant covers the right of first publication of the work, the period begins at the end of 35 years from the date of first publication of the work.'' H.R. 4347, 89th Cong. (1965). But the word ''first'' was dropped from subsequent bills, *see* H.R. 2512, 91st Cong. (1967), and it is that version of the provision that was eventually enacted as part of the Copyright Act of 1976. The legislative history shows that this change was intentional. The relevant House Report explains that the provision was specifically amended so that the provision would ''apply to any publication contract, and not just to contracts involving first publication.'' H.R. Rep. No. 89–2237, at 122 (1966); *see also* H.R. Rep. No. 90–83, at 93 (1967). Accordingly, the Final Version reverts to the Office's initial interpretation reflected in the 2014 version of the *Compendium,* with an additional discussion of this issue, as this interpretation is most consistent with the terms of the Copyright Act.

Section 115 Compulsory License

One individual expressed concern that the Public Draft suggested that copyright owners must register their works as a condition for receiving royalties under the compulsory license set forth in section 115(c)(1) of the Copyright Act. The Final Version confirms that copyright owners may be entitled to receive royalties under this section if they are identified ''in the registration or other public records of the Copyright Office.'' *See* Final Version section 202 (quoting 17 U.S.C. 115(c)(1)).

Unit of Publication

The 2014 version of the *Compendium* states that multiple works may be registered as a unit of publication if they are physically packaged or bundled together and distributed to the public in that form. It also contains a single sentence suggesting that a ''digital download'' could be considered a unit of publication. *See Compendium,* section 1107.1 (3d ed. 2014). The Public Draft removed this sentence because it is inconsistent with other provisions in the *Compendium* that clearly and repeatedly state that the unit of publication option may only be used to register works fixed and distributed in a physical format. The revision to the sentence in section 1107.1 does not represent a change in policy from the 2014 version of the *Compendium;* it simply corrects a minor inconsistency in that version.

The Copyright Alliance and one individual asked the Office to expand the unit of publication definition to allow applicants to register separate works that are packaged and distributed in a digital form. The Office declines to adopt this suggestion. The unit of publication option was always intended to be a narrow accommodation to account for a particular scenario: where a physical product bundles together multiple types of works of authorship as a single ''unit,'' and those separate works are not published individually. The paradigmatic example is a board game with playing pieces, a game board, and instructions; each of those components may be a separate work of authorship—the playing pieces may be individual sculptural works, the game board may be a pictorial or graphic work, and the instructions may be a literary work. But it would make little sense—and would be administratively burdensome on the Office—to impose the general requirement of separate applications for each work of authorship in these cases. Among other things, imposition of that rule would result in deposits that are either duplicative (*e.g.,* the applicant sends the entire board game with each application) or incomplete (*e.g.,* the applicant sends each element of the board game separately).

In the Office's view, the same concerns are not present with respect to digital products. To begin with, the problem with duplication of deposits is significantly diminished with respect to digital works. Moreover, while it may be relatively easy for applicants and the Copyright Office to assess whether a physical product qualifies as true ''unit of publication,'' the same cannot readily be said for digital products, which could be distributed in a single digital file or in multiple digital files, or could readily be published only as a bundle, or both in a bundle and individually. Thus, at least at this time, the Office believes that it is inappropriate to extend the unit of publication option to digital products.[8]

stylized typeface and that typeface is not copyrightable.

[7] The Office also removed some of the other activities listed in these sections, such as runway modeling and wrestling matches. The Kernochan Center did not mention these activities in its comments. The Office decided to remove them for stylistic reasons and to streamline the discussion of these issues.

[8] Another individual asked the Office to clarify that works fixed in the same medium of expression may be considered a unit of publication. The Office did not accept this suggestion. As a general rule, an applicant should prepare a separate application, filing fee, and deposit for each work that is submitted for registration. The unit of publication option is a narrow and limited exception to this

Continued

That said, the Office has, over time, expanded its group registration options to accommodate the need to register multiple works with the same application. To the extent the concern expressed in the comments relates to the inability to register multiple musical works fixed and/or distributed on an album, the Office is planning to create a new group registration option to accommodate those situations.

Collective Works and Contributions to Collective Works

The Copyright Alliance commented on the Public Draft's discussion of collective works. First, it asserted that more information should be included in applications for certain collective works. When registering an album together with the works on that album, the Copyright Alliance asserted that applicants should identify the complete content of the album. Specifically, the Copyright Alliance suggested that section 618.7(B)(2) should be revised to state that titles of the individual works should be included in the ''Content Titles'' field, even if the applicant intends to exclude one or more of those works from the claim. The Copyright Alliance said this would provide a clear record of what the album contains and makes the titles accessible in the online public record.[9]

The Office declines to adopt the Copyright Alliance's suggestion at this time. The Office encourages applicants to provide album information as suggested by the Copyright Alliance, but it will not require applicants for all collective works to submit all similar information. Requiring applicants to provide contents titles for an album may be feasible, but applying the same requirement to all types of collective works may be burdensome for some applicants. That said, the Office plans to revise the sections on collective works consisting of musical works and/or sound recordings in a future update to the *Compendium,* and will revisit the Copyright Alliance's suggestions in making those revisions.

Additionally, the Copyright Alliance contended that the Office will not register a collective work unless it contains at least four independent works (citing *Compendium* sections 312.2, 618.7, and 803.8(F)(4)). The Copyright Alliance said this is a problem for the recording industry, because extended play albums (''EPs'') often contain two or three tracks. In such cases, the individual tracks must be registered separately. It also said this creates a workflow problem for the record labels because, although EPs are a single product, they cannot be registered in a manner that reflects the way they are commercially distributed.

The Office registers ''original works of authorship,'' as defined in sections 102 and 103 of the Copyright Act. A compilation may be registered if it contains a sufficient amount of creative expression in the selection, coordination, and/or arrangement of its component elements. These requirements are set forth in the statute, and the Office adheres to this standard when it examines an album or any other type of compilation. The vast majority of albums contain sufficient selection, coordination, or arrangement authorship to be considered a collective work, but some albums do not satisfy this requirement. The Office recognizes that in such cases, a separate application may be required for each individual track, and that this may increase the incremental cost and effort of seeking a registration. But, contrary to the Copyright Alliance's suggestion, the Office does not have a bright line rule regarding the number of tracks that must be present to qualify as a collective work; the Office will simply scrutinize collective work applications with fewer tracks more closely to ensure they pass the necessary threshold of creativity.

Dated: September 27, 2017.

Karyn Temple Claggett,

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

[FR Doc. 2017–21065 Filed 9–28–17; 8:45 am]

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rule. It provides a means for registering multiple works with one submission in cases where multiple submissions would otherwise be required and where no other statutory or regulatory accommodation exists. Often, when multiple items are fixed in the same medium of expression, they may be considered a derivative work, a compilation, or a collective work. If so, there is no need to rely on the unit of publication option, because the statute already provides a means for obtaining a registration. If applicants could register multiple works as a unit of publication whenever they happen to be fixed in the same medium of expression, the regulatory accommodation would displace the statutory scheme, and this narrow exception would become the default method for registering published works.

[9] Similarly, one individual asked the Office to add a new space to Form TX where applicants may provide titles of the works appearing within a unit of publication. The Office declines to adopt this suggestion, because the *Compendium* already provides instructions for adding title information to a paper application. *See Compendium* section 1107.4(C).

NATIONAL CAPITAL PLANNING COMMISSION

Submission Guidelines

AGENCY: National Capital Planning Commission.

ACTION: Notice of availability.

SUMMARY: The National Capital Planning Commission (NCPC or Commission) hereby adopts new Submission Guidelines.

DATES: The Submission Guidelines are adopted as of October 30, 2017.

FOR FURTHER INFORMATION CONTACT: Matthew Flis, Senior Urban Designer at (202) 482–7236 or *submission@ncpc.gov.*

SUPPLEMENTARY INFORMATION:

I. General Background

Federal and non-Federal agency applicants whose development proposals are subject to statutorily-mandated Commission plan and project review must submit their proposals to the Commission following a process laid out in the Submission Guidelines. The Submission Guidelines describe the content of submissions, the submission stages, and the coordination and review process governing submissions.

The new Submission Guidelines accomplish three primary objectives: (1) Create clear, accessible, and efficient guidelines that are responsive to applicant needs; (2) Align NCPC's review stages and National Environmental Policy Act requirements with those of applicant agencies to save time and resources in the planning process; and (3) Allow staff to exempt from Commission review certain minor projects based on specific criteria where there is no federal interest. The new Submission Guidelines are posted on NCPC's Web site at *https://www.ncpc.gov/initiatives/subnepa.html.*

II. Summary of and Response to Comments

NCPC published a notice of availability; request for comment; and notice of public meetings for its revised Submission Guidelines in the **Federal Register** on May 26, 2017. The notice announced, among others, a 45-day public comment period. The public comment period closed on July 10, 2017. A summary of the comments received and NCPC's response thereto can be found in Appendix A of the Executive Director's Recommendation (EDR) for NCPC file No. 7744 dated September 7, 2017. The subject EDR is located on NCPC's Web site at *https://www.ncpc.gov/docs/actions/2017September/NCPC_Submission_Guidelines_Recommendation_7744_Sept2017.pdf.*

Authority: 40 U.S.C. 8721(e)(2) and 8722(a).

Dated: September 21, 2017.

Anne R. Schuyler,

General Counsel.

[FR Doc. 2017–20612 Filed 9–28–17; 8:45 am]

BILLING CODE 7502–02–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Designation of 16 Counties as High Intensity Drug Trafficking Areas

AGENCY: Office of National Drug Control Policy (ONDCP), Executive Office of the President.

ACTION: Notice of HIDTA designations.

SUMMARY: The Director of the Office of National Drug Control Policy designated 16 additional counties/cities and removed two counties as High Intensity Drug Trafficking Areas (HIDTAs) pursuant to agency law.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice should be directed to Michael K. Gottlieb, National HIDTA Program Director, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503; (202) 395–4868.

SUPPLEMENTARY INFORMATION: The new counties/cities are (1) Sullivan County in Tennessee and Wood County in West Virginia as part of the Appalachia HIDTA; (2) Greenville County in South Carolina as part of the Atlanta/Carolinas HIDTA; (3) DuPage County in Illinois as part of the Chicago HIDTA; (4) St. Clair County in Michigan as part of the Michigan HIDTA; (5) Ocean County in New Jersey and Oneida County in New York as part of the New York/New Jersey HIDTA; (6) Bradford and Union Counties in Florida as part of the North Florida HIDTA; (7) San Benito County in California as part of the Northern California HIDTA; (8) Bannock County in Idaho as part of the Oregon/Idaho HIDTA; (9) Montgomery County in Pennsylvania as part of the Philadelphia/Camden HIDTA; (10) Collier and Martin Counties in Florida as part of the South Florida HIDTA; (11) Taos County in New Mexico as part of the Southwest Border HIDTA—New Mexico Region; and (12) Dorchester County in Maryland as part of the Washington/Baltimore HIDTA. The Director of ONDCP also removed two counties as HIDTAs pursuant to 21 U.S.C. 1706, effective July 10, 2017. The two counties removed from HIDTA county designation within the Houston HIDTA are Orange and San Patricio counties in Texas. The Executive Board of the Houston HIDTA requested removal of these counties from designation after assessing the threat and determining that these counties no longer met the statutory criteria necessary for designation as HIDTA counties. ONDCP evaluated and accepted the request.

Dated: September 26, 2017.

Michael J. Passante,

Acting General Counsel.

[FR Doc. 2017–20937 Filed 9–28–17; 8:45 am]

BILLING CODE 3280–F5–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0156]

Information Collection: Solicitation of Non-Power Reactor Operator Licensing Examination Data

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a proposed collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Solicitation of Non-Power Reactor Operator Licensing Examination Data.''

DATES: Submit comments by October 30, 2017.

ADDRESSES: Submit comments directly to the OMB reviewer at: Aaron Szabo, Desk Officer, Office of Information and Regulatory Affairs (3150–XXXX), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–3621; email: *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0156 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0156. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2016–0156 on this Web site.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML17222A053. The supporting statement is available in ADAMS under Accession No. ML17222A090.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov*.

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a proposed collection of information to OMB for review entitled, ''Solicitation of Non-Power Reactor Operator Licensing Examination Data.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on May 18, 2017, 82 FR 22865.

1. *The title of the information collection:* Solicitation of Non-Power Operator Licensing Examination Data.

2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.

3. *Type of submission:* New.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required or requested:* Annually.

6. *Who will be required or asked to respond:* All holders of operating licenses for non-power reactors under the provision of part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' except those that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

7. *The estimated number of annual responses:* 31.

8. *The estimated number of annual respondents:* 31.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 31 (One (1) hour per respondent, annually).

10. *Abstract:* The NRC is requesting a new clearance to annually request all non-power reactor licensees and applicants for an operating license to voluntarily send to the NRC: (1) Their projected number of candidates for initial operator licensing examinations, and (2) the estimated dates of the examinations. This information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the non-power nuclear community.

Dated at Rockville, Maryland, this 25th day of September 2017.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2017–20913 Filed 9–28–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0196]

Regulatory Guides: ''Conduct of Nuclear Material Physical Inventories,'' and ''Statistical Evaluation of Material Unaccounted For''

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guides; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing the following regulatory guides (RGs): RG 5.13, ''Conduct of Nuclear Material Physical Inventories,'' Revision 0, published in June 1973, and RG 5.33, ''Statistical Evaluation of Material Unaccounted For,'' Revision 0, published in June 1974. These RGs are being withdrawn because the guidance has been incorporated into RG 5.88, ''Physical Inventories and Material Balances at Fuel Cycle Facilities.''

DATES: The applicable date of the withdrawal of RGs 5.13, and 5.33 is September 29, 2017.

ADDRESSES: Please refer to Docket ID NRC–2017–0196 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–2017–0196. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced. The basis for withdrawal of RGs 5.13, and 5.33 is available in ADAMS under Accession Nos. ML17173A816, and ML17173A819 respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Glenn Tuttle, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7230, email: *Glenn.Tuttle@nrc.gov;* or Mekonen Bayssie, Office of Nuclear Regulatory Research, telephone: 301–415–1699, email: *Mekonen.Bayssie@nrc.gov*. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: The NRC is withdrawing RGs 5.13 published on December 6, 1973 (38 FR 33629), and 5.33 published on July 9, 1974 (39 FR 25259) because this guidance has been incorporated into RG 5.88, ''Physical Inventories and Material Balances at Fuel Cycle Facilities,'' (ADAMS Accession No. ML17167A292) and RGs 5.13 and 5.33 are therefore no longer needed. These two RGs were issued by the NRC staff in the 1970s to provide guidance that was considered acceptable for complying with the NRC's regulations related to the performance, evaluation, and reporting of physical inventories and material balances at fuel cycle facilities. Regulatory Guide 5.88 is being issued to update the guidance that is being withdrawn.

I. Further Information

The withdrawal of RGs 5.13 and 5.33 does not alter any prior or existing NRC licensing approval or the acceptability of licensee commitments made regarding the withdrawn guidance. Although RGs 5.13 and 5.33 are withdrawn, current licensees referencing these RGs may continue to do so, and withdrawal does not affect any existing licenses or agreements. However, by withdrawing RGs 5.13 and 5.33, the NRC no longer approves reliance upon such guidance in future requests or applications for NRC licensing actions.

Dated at Rockville, Maryland, on September 20, 2017.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2017–20695 Filed 9–28–17; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Submit comments on or before November 28, 2017.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: 2018–19 Campus Ambassadors Onboarding form.

OMB Control Number: 0420–xxxx.

Type of Request: New.

Affected Public: Individuals.

Respondents' Obligation To Reply: Voluntary.

Burden to the Public:

Estimated burden (hours) of the collection of information:

a. Number of respondents: 1,000
b. Frequency of response: one time
c. Completion time: 5 minutes
d. Annual burden hours: 83 hours

General Description of Collection: The information will be used by the Office of University Programs to collect name, mailing address, school and t-shirt sizes to send out a promotional kit to students that have accepted our offer to become a campus ambassador.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on September 26, 2017.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2017–20918 Filed 9–28–17; 8:45 am]

BILLING CODE 6051–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before November 28, 2017.

ADDRESSES: Comments should be addressed to Denora Miller, FOIA/Privacy Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov*. Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Title: 2018–19 Campus Ambassadors Application.

OMB Control Number: 0420–xxxx.

Type of Request: New.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

Estimated burden (hours) of the collection of information:

a. Number of respondents: 1,000
b. Frequency of response: one time
c. Completion time: 20 minutes
d. Annual burden hours: 333 hours

General Description of Collection: The information will be used by Peace Corps Recruitment and the Office of University Programs to select student campus ambassadors. The application includes questions related to relevant experience as well as requests students upload a resume. The information requested—general information, questions related to the position and a student's resume—is a standard practice to determine the best candidates for the program.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC on September 26, 2017.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2017–20917 Filed 9–28–17; 8:45 am]

BILLING CODE 6051–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81717; File No. SR–NYSEArca–2017–96]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.40–O To Allow Certain Order Types To Be Excluded From the Risk Limitation Mechanism

September 25, 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 11, 2017, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.40–O (Risk Limitation Mechanism) to allow certain order types to be excluded from the risk limitation mechanism. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.40–O (Risk Limitation Mechanism) to allow certain order types to be excluded from the risk limitation mechanism. Specifically, the Exchange proposes to provide OTP Holder and OTP Firms (collectively, ''OTPs'') with the option to exclude Immediate-Or-Cancel (''IOC'') orders from being counted against risk limitation thresholds.[4]

Risk Limitation Mechanisms

The Exchange offers OTPs the option of utilizing risk limitation settings to assist OTPs in managing risk related to submitting orders during periods of increased and significant trading activity.[5] An OTP can utilize one of three risk limitation mechanisms for its orders—based on the number of transactions executed, the number of contracts traded, or the percent of the OTP's order size—which automatically cancels such orders when certain parameter settings are breached.[6] The Exchange maintains trade counters that increment based on the number of trades executed, either from a single-leg order or any leg of a Complex Order, in any series in a specified class.[7] The trade counters reset after an Exchange-determined time period.[8] When an OTP has breached its risk settings (*i.e.,* has traded more than the contract or volume limit or cumulative percentage limit of a class during the specified measurement interval), the Exchange will cancel all of the OTP's open orders in that class until the OTP notifies the Exchange it will resume submitting orders.[9] The temporary suspension of orders from the market that results when the risk settings are triggered is meant to operate as a safety valve that enables OTPs to re-evaluate their positions before requesting to re-enter the market.

Proposed Exclusion of IOC Orders From Risk Settings

Under the current Rule, an OTP may activate a Risk Limitation Mechanism, and corresponding settings, for orders in a specified class and, once activated, the mechanism and the settings established will remain active unless, and until, the OTP deactivates the Risk Limitation Mechanism or changes the settings.[10] Thus, once an OTP activates risk settings for orders in a specified class, the risk settings apply to all order types in that options class. The Exchange proposes to modify the rule to provide an OTP that chooses to utilize risk settings for its orders the option to exclude both single-legged orders and Complex Orders designated as IOC from being considered by the trade counter. To effect this change, proposed Commentary .07 to Rule 6.40–O would be amended to provide that ''[a]ny OTP that activates the Risk Limitation Mechanisms for orders pursuant to Commentary .04(b) of this Rule may opt to exclude any orders (*i.e.,* whether single-leg orders or Complex Orders) designated with a time-in-force of IOC from being considered by a trade counter.''

By their terms, IOC orders (or portions thereof) will cancel if not immediately executed. As such, IOC orders are never ranked (as resting interest) in the Consolidated Book. The Exchange believes that certain OTPs utilize IOC orders to access liquidity on the Exchange. Thus, the proposed change is designed to accommodate participants that utilize IOCs in this manner by enabling them to exclude IOC orders from being counted and avoid potentially triggering their risk settings (prematurely), resulting in the cancellation of open orders. The Exchange believes that providing OTPs this additional flexibility may encourage more OTPs to utilize the risk settings, which benefits all market participants. The Exchange also believes that the proposed change would result in risk settings that may be better calibrated to suit the needs of certain OTPs (*i.e.,* those that routinely utilize IOC orders to access liquidity on the Exchange), which improved risk settings should encourage OTPs to direct additional order flow and liquidity to the Exchange.

The Exchange notes that the proposed change is limited to IOC orders being counted towards whether a risk limitation threshold has been reached. In the event an OTP breaches its risk limitation settings, any new orders in the specified class, including incoming IOC orders, sent by the OTP would be rejected until the OTP requests that the Exchange enable the entry of new orders.[11]

Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change, which implementation will be no later than 90 days after the effectiveness of this rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative

[4] An IOC order is ''[a] Limit Order that is to be executed in whole or in part on the Exchange as soon as such order is received, and the portion not so executed is to be canceled.'' *See* Rule 6.62(k).

[5] *See* Commentary .04(b) to Rule 6.40–O (providing that OTPs may avail themselves of one of the three risk limitation mechanisms for certain of their orders). Under the current Rule, Market Makers are required to utilize the risk limitation settings for quotes and the Exchange is not proposing to alter any aspect of this Rule in this regard. *See also* Commentary .04(a) to Rule 6.40–O; and Rule 6.40(b)(2), (c)(2), (d)(2) and (e)(2).

[6] *See* Rule 6.40–O(b)(1), (c)(1), (d)(1) and Commentaries .01 to Rule 6.40–O (regarding the cancellation of orders once the risk settings have been breached).

[7] *See* Rule 6.40–O(a)(1), (f). *See also* Commentaries .05–.07 to Rule 6.40 (regarding the operation of the trade counters).

[8] *See* Commentary .06 to Rule 6.40–O.

[9] *See* Commentaries .01 and .02 to Rule 6.40–O (requiring that an OTP request that it be re-enabled after a breach of its risk settings). In the event that an OTP experiences multiple, successive triggers of its risk settings, the Exchange would cancel all of the open orders—as opposed to cancelling only those in the option class (underlying symbol) in which the risk settings were triggered. *See* Rule 6.40–O(f) and Commentary .02 to Rule 6.40–O.

[10] *See* Commentary .04(b) to Rule 6.40–O.

[11] *See* Commentary .02 to Rule 6.40–O.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market by providing OTPs greater control and flexibility over setting their risk tolerance, which may enhance the efficacy of the risk settings. By their terms, IOC orders (or portions thereof) will cancel if not immediately executed. As such, IOC orders are never ranked (as resting interest) in the Consolidated Book. The Exchange believes that certain market participants utilize IOC orders to access liquidity on the Exchange. Thus, the proposed change is designed to accommodate participants that utilize IOCs in this manner by enabling them to exclude IOC orders from being counted and avoid potentially triggering their risk settings (prematurely), resulting in the cancellation of open orders. The Exchange believes that providing OTPs this additional flexibility may encourage more OTPs to utilize the risk settings, which benefits all market participants. Further, the proposed change would promote just and equitable principles of trade because it would result in risk settings that may be better calibrated to suit the needs of certain OTPs (*i.e.,* those that routinely utilize IOC orders to access liquidity on the Exchange), which improved risk settings should encourage OTPs to direct additional order flow and liquidity to the Exchange. To the extent additional order flow is submitted to the Exchange as a result of the proposed change, all market participants stand to benefit from increased trading.

The Exchange notes that an OTP has the option of utilizing risk settings for all orders submitted to the Exchange and, as proposed, would have the additional option of excluding from these risk settings any IOC orders in a given options class submitted to the Exchange.

This proposed change, which was specifically requested by some OTPs, would foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities as it will be available to all OTPs on an optional basis and may encourage more OTPs to utilize this enhanced functionality to [sic] benefit of all market participants. Because the risk controls are designed to prevent the execution of erroneously priced trades, the Exchange believes that any proposal designed to increase the number of OTPs that utilize the functionality would benefit all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is proposing a market enhancement that would provide OTPs with greater control and flexibility over setting their risk tolerance and, potentially, more protection over risk exposure. The proposal is structured to offer the same enhancement to all OTPs, regardless of size, and would not impose a competitive burden on any participant. The Exchange does not believe that the proposed enhancement to the existing risk limitation mechanism would impose a burden on competing options exchanges. Rather, the availability of this mechanism may foster more competition. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. When an exchange offers enhanced functionality that distinguishes it from the competition and participants find it useful, it has been the Exchange's experience that competing exchanges will move to adopt similar functionality. Thus, the Exchange believes that this type of competition amongst exchanges is beneficial to the market place [sic] as a whole as it can result in enhanced processes, functionality, and technologies.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange can implement the proposal without delay. The Exchange believes that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would enable the Exchange to implement without delay the proposed optional functionality, which the Exchange believes may, in turn, encourage more OTPs to utilize the optional risk settings for orders. Thus, the Exchange believes waiver of the operative delay would protect investors by enabling the Exchange to provide greater flexibility to its Risk Limitation Mechanisms for orders, which may result in increased usage of the risk settings to the benefit of all market participants. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will provide OTP Holders with the flexibility to exclude IOC orders from consideration by a trade counter, which, the Exchange believes, could encourage additional OTP Holders to use the risk limitation settings. As noted above, the risk limitation settings are designed to assist OTP Holders in managing risk related to submitting orders during periods of increased and significant trading activity. Under the proposal, the ability to exclude IOC orders from consideration by a trade counter is optional; thus, an OTP Holder that utilizes the risk limitation settings and wishes to continue to have its IOC orders considered by a trade counter will be able to do so. Accordingly, the Commission hereby waives the operative delay and designates the

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 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.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–96 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2017–96. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2017–96, and should be submitted on or before October 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–20892 Filed 9–28–17; 8:45 am]

BILLING CODE 8011–01–P

[18] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81715; File No. SR–BatsBZX–2017–07]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Under BZX Rule 14.11(c)(4) the Shares of the VanEck Vectors AMT-Free National Municipal Index ETF of VanEck Vectors ETF Trust

September 25, 2017.

On January 27, 2017, Bats BZX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade under BZX Rule 14.11(c)(4) shares of the VanEck Vectors AMT-Free National Municipal Index ETF of VanEck Vectors ETF Trust. The proposed rule change was published for comment in the **Federal Register** on February 14, 2017.[3] On March 10, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On March 30, 2017, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On May 11, 2017, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] On August 9, 2017, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.[7] The Commission received no comments on the proposed rule change.

On September 21, 2017, the Exchange withdrew the proposed rule change (SR–BatsBZX–2017–07).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–20890 Filed 9–28–17; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79989 (February 8, 2017), 82 FR 10615.

[4] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-batsbzx-2017-07/batsbzx201707-1667531-148997.pdf.*

[5] *See* Securities Exchange Act Release No. 80350, 82 FR 16647 (April 5, 2017).

[6] *See* Securities Exchange Act Release No. 80664, 82 FR 22680 (May 17, 2017).

[7] *See* Securities Exchange Act Release No. 81363, 82 FR 38726 (August 15, 2017).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81699; File No. SR–NYSEArca–2017–111]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the GraniteShares Silver Trust Under NYSE Arca Equities Rule 8.201

September 25, 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 12, 2017, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the GraniteShares Silver Trust under NYSE Arca Equities Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

8.201. 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 GraniteShares Silver Trust (the ''Trust''), under NYSE Arca Equities Rule 8.201.[4] Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (''UTP'') Commodity-Based Trust Shares.[5]

The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended,[6] and is not required to register under such act. The Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended.[7]

The Sponsor of the Trust is GraniteShares LLC, a Delaware limited liability company. The Bank of New York Mellon is the trustee of the Trust (the ''Trustee'')[8] and ICBC Standard Bank PLC is the custodian of the Trust (the ''Custodian'').[9]

The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 of other precious metals and silver-based commodity trusts, including the iShares Silver Trust,[10] the ETFS Silver Trust,[11] and the Sprott Physical Silver Trust.[12]

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.[13]

Operation of the Trust[14]

The investment objective of the Trust will be for the Shares to reflect the performance of the price of silver, less the expenses and liabilities of the Trust. The Trust will issue Shares which represent units of fractional undivided beneficial interest in and ownership of the Trust.

The Trust will not trade in silver futures or options on any futures exchange or over the counter (''OTC'') transactions in forwards, options and other derivatives. The Trust will not hold or trade in commodity futures contracts, ''commodity interests'', or any other instruments regulated by the Commodities Exchange Act. The Trust will take delivery of physical silver that complies with the LBMA silver delivery rules.

The Shares are intended to constitute a simple and cost-effective means of making an investment similar to an investment in silver. Although the Shares are not the exact equivalent of an investment in silver, they provide investors with an alternative that allows a level of participation in the silver market through the securities market.

Operation of the Silver Market

The global trade in silver consists of OTC transactions in spot, forwards, and options and other derivatives, together with exchange traded futures and options.

The OTC silver market includes spot, forward, and option and other derivative transactions conducted on a principal-to-principal basis. While this is a global, nearly 24-hour per day market, its main centers are London (the biggest venue), New York and Zurich.

According to the LBMA, the trade association that acts as the coordinator for activities conducted on behalf of its members and other participants in the London bullion market, members of the LBMA act as OTC market makers and it is believed that most OTC market trades are cleared through London. The LBMA plays an important role in setting OTC silver trading industry standards. Members of the London bullion market typically trade with each other and with their clients on a principal-to-principal basis. All risks, including those of credit, are between the two parties to a transaction. This is known as an OTC market, as opposed to an exchange-traded environment. Unlike a futures exchange, where trading is based around standard contract units, settlement dates and delivery specifications, the OTC market allows flexibility. It also provides confidentiality, as transactions are conducted solely between the two principals involved.

[4] On September 8, 2017, the Trust submitted to the Commission its draft registration statement on Form S–1 (the ''Registration Statement'') under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''). The Jumpstart Our Business Startups Act, enacted on April 5, 2012, added Section 6(e) to the Securities Act. Section 6(e) of the Securities Act provides that an ''emerging growth company'' may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in Securities Act Rule 433(h)(4). An emerging growth company is defined in Section 2(a)(19) of the Securities Act as an issuer with less than $1,000,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently has submitted its Form S–1 Registration Statement on a confidential basis with the Commission.

[5] Commodity-Based Trust Shares are securities issued by a trust that represents investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[6] 15 U.S.C. 80a–1.

[7] 17 U.S.C. 1.

[8] The Trustee is responsible for the day-to-day administration of the Trust. The responsibilities of the Trustee include (1) processing orders for the creation and redemption of Baskets; (2) coordinating with the Custodian the receipt and delivery of silver transferred to, or by, the Trust in connection with each issuance and redemption of Baskets; (3) calculating the net asset value of the Trust on each business day; and (4) selling the Trust's silver as needed to cover the Trust's expenses. The Trust does not have a Board of Directors or persons acting in a similar capacity.

[9] The Custodian is responsible for safekeeping the silver owned by the Trust. The Custodian is appointed by the Trustee and is responsible to the Trustee under the Trust's silver custody agreements. The Custodian will facilitate the transfer of silver in and out of the Trust through the unallocated silver accounts it may maintain for each Authorized Participant or unallocated silver accounts that may be maintained for an Authorized Participant by another silver-clearing bank approved by the London Bullion Market Association (''LBMA''), and through the unallocated silver account it will maintain for the Trust. The Custodian is responsible for allocating specific bars of silver to the Trust Allocated Account. As used herein, ''Trust Allocated Account'' means the loco London account established in the name of the Trustee and maintained for the benefit of the Trust by the Custodian on an allocated basis pursuant to a written custody agreement between the Trustee and the Custodian. The Custodian will provide the Trustee with regular reports detailing the silver transfers in and out of the Trust Unallocated Account with the Custodian and identifying the silver bars held in the Trust Allocated Account.

[10] *See* Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124).

[11] *See* Securities Exchange Act Release No. 59781 (April 14, 2009), 74 FR 18771 (April 24, 2009) (SR–NYSEArca–2009–28).

[12] *See* Securities Exchange Act Release No. 63043 (October 5, 2010), 75 FR 62615 (October 12, 2010) (SR–NYSEArca–2010–84).

[13] With respect to the application of Rule 10A–3 (17 CFR 240.10A–3) under the Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

[14] The description of the operation of the Trust, the Shares and the silver market contained herein are based, in part, on the Registration Statement. *See* note 4, *supra.*

Creation and Redemption of Shares

The Trust will create and redeem Shares on a continuous basis in one or more blocks of 50,000 Shares (a block of 50,000 Shares is called a ''Basket''). As described below, the Trust will issue Shares in Baskets to certain authorized participants (''Authorized Participants'') on an ongoing basis. Baskets of Shares will only be issued or redeemed in exchange for an amount of silver represented by the aggregate number of Shares redeemed. No Shares will be issued unless the Custodian has allocated to the Trust's account the corresponding amount of silver. Initially, a Basket will require delivery of 50,000 fine ounces of silver. The amount of silver necessary for the creation of a Basket, or to be received upon redemption of a Basket, will decrease over the life of the Trust, due to the payment or accrual of fees and other expenses or liabilities payable by the Trust.

Baskets may be created or redeemed only by Authorized Participants. Orders must be placed by 3:59 p.m. Eastern Time (''E.T.''). The day on which a Trust receives a valid purchase or redemption order is the order date.

Each Authorized Participant must be a registered broker-dealer, a participant in Depository Trust Corporation (''DTC''), have entered into an agreement with the Trustee (the ''Authorized Participant Agreement'') and have established a silver unallocated account with the Custodian or a physical silver clearing bank. The Authorized Participant Agreement provides the procedures for the creation and redemption of Baskets and for the delivery of silver in connection with such creations or redemptions.

According to the Registration Statement, Authorized Participants may surrender Baskets of Shares in exchange for the corresponding Basket Amount announced by the Trustee. Upon surrender of such Shares and payment of the Trustee's applicable fee and of any expenses, taxes or charges (such as stamp taxes or stock transfer taxes or fees), the Trustee will deliver to the order of the redeeming Authorized Participant the amount of silver corresponding to the redeemed Baskets. Shares can only be surrendered for redemption in Baskets of 50,000 Shares each.

Before surrendering Baskets of Shares for redemption, an Authorized Participant must deliver to the Trustee a written request indicating the number of Baskets it intends to redeem. The date the Trustee receives that order determines the Basket Amount to be received in exchange. However, orders received by the Trustee after 3:59 p.m. E.T. on a business day or on a business day when the LBMA Silver Price or other applicable benchmark price is not announced, will not be accepted.

The redemption distribution from the Trust will consist of a credit to the redeeming Authorized Participant's unallocated account representing the amount of the silver held by the Trust evidenced by the Shares being redeemed as of the date of the redemption order.

Net Asset Value

The NAV of the Trust will be calculated by subtracting the Trust's expenses and liabilities on any day from the value of the silver owned by the Trust on that day; the NAV per Share will be obtained by dividing the NAV of the Trust on a given day by the number of Shares outstanding on that day. On each day on which the Exchange is open for regular trading, the Trustee will determine the NAV as promptly as practicable after 4:00 p.m. E.T. The Trustee will value the Trust's silver based on the most recently announced LBMA Silver Price. If the Sponsor determines that such price is inappropriate to use, the Sponsor will identify an alternate basis for evaluation to be employed by the Trustee. Further, the Sponsor may instruct the Trustee to use on an on-going basis a different publicly available price which the Sponsor determines to fairly represent the commercial value of the Trust's silver.

The NAV per Share will be calculated by taking the current price of the Trust's total assets, subtracting any liabilities, and dividing by the total number of Shares outstanding. Authorized Participants will offer Shares at an offering price that will vary, depending on, among other factors, the price of silver and the trading price of the Shares on the Exchange at the time of offer. Authorized Participants will not receive from the Trust, the Sponsor, the Trustee or any of their affiliates any fee or other compensation in connection with the offering of the Shares.

Secondary Market Trading

While the Trust seeks to reflect generally the performance of the price of silver less the Trust's expenses and liabilities, Shares may trade at, above or below their NAV. The NAV of Shares will fluctuate with changes in the market value of the Trust's assets. The trading prices of Shares will fluctuate in accordance with changes in their NAV as well as market supply and demand. The amount of the discount or premium in the trading price relative to the NAV may be influenced by non-concurrent trading hours between the major silver markets and the Exchange. While the Shares trade on the Exchange until 4:00 p.m. E.T., liquidity in the market for silver may be reduced after the close of the major world silver markets, including London, Zurich and COMEX. As a result, during this time, trading spreads, and the resulting premium or discount, on Shares may widen.

Availability of Information Regarding Silver

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity such as silver over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of silver price and market information available on public Web sites and through professional and subscription services.

Investors may obtain silver pricing information on a 24-hour basis based on the spot price for an ounce of silver from various financial information service providers, such as Reuters and Bloomberg. In addition, ICAP's EBS platform also provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot silver, as well as a feed of live streaming prices to market data subscribers.[15]

Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of silver and last sale prices of silver futures, as well as information about news and developments in the silver market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on silver prices directly from market participants.

Complete real-time data for silver futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on silver, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. Current silver spot prices are

[15] *See http://www.icap.com.*

also generally available with bid/ask spreads from silver bullion dealers.[16]

Availability of Information

The intraday indicative value (''IIV'') per Share for the Shares will be disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The IIV will be calculated based on the amount of silver held by the Trust and a price of silver derived from updated bids and offers indicative of the spot price of silver.[17]

The Web site for the Trust (*www.graniteshares.com*) will contain the following information, on a per Share basis, for the Trust: (a) The mid-point of the bid-ask price [18] at the close of trading (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the Trust's prospectus. Finally, the Trust's Web site will provide the prior day's closing price of the Shares as traded in the U.S. market. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in NYSE Arca Equities Rule 8.201(e) for initial and continued listing of the Shares.

A minimum of one Basket or 50,000 Shares will be required to be outstanding at the start of trading, which is equivalent to 50,000 fine ounces of silver. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Trust subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, 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.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Under NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying silver, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying silver market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[19] The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily. The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV, as described above. If the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

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.[20] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and 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 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

[16] The silver spot price is indicative only, constructed using a variety of sources to compile a spot price that is intended to represent a theoretical quote that might be obtained from a market maker from time to time.

[17] The IIV on a per Share basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

[18] The bid-ask price of the Shares will be determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[19] *See* NYSE Arca Equities Rule 7.12.

[20] 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.

obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[21]

Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying silver, silver futures contracts, options on silver futures, or any other silver derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Trust on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust 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 Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of silver trading during the Core and Late Trading Sessions after the close of the major world silver markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Creation Basket Deposit) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as will be described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical silver, that the Commission has no jurisdiction over the trading of silver as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of silver futures contracts and options on silver futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[22] 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 Equities Rule 8.201. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of silver price and silver market information available on public Web sites and through professional and subscription services. Investors may obtain silver pricing information on a 24-hour basis based on the spot price for an ounce of silver from various financial information service providers. ICAP's EBS platform also provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot silver, as well as a feed of live streaming prices to market data subscribers.

The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's Web site. The IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The Trust's Web site will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

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 an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding silver pricing.

[21] For a list of the current members of ISG, *see www.isgportal.org.*

[22] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will enhance competition by accommodating Exchange trading of an additional exchange-traded product relating to physical silver.

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, 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–2017–111 in 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–2017–111. This file number should be included in 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2017–111 and should be submitted on or before October 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–20887 Filed 9–28–17; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81687]

Public Availability of the Securities and Exchange Commission's FY 2015 Service Contract Inventory

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010, SEC is publishing this notice to advise the public of the availability of the FY2016 Service Contract Inventory (SCI) and the FY2015 SCI Analysis. The SCI provides information on FY2016 actions over $25,000 for service contracts. The inventory organizes the information by function to show how SEC distributes contracted resources throughout the agency. SEC developed the inventory per the guidance issued on November 5, 2011 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.*

The Service Contract Inventory Analysis for FY2015 provides information based on the FY 2015 Inventory. Please note that the SEC's FY 2016 Service Contract Inventory data is now included in government-wide inventory available on *www.acquisition.gov.* The government-wide inventory can be filtered to display the inventory data for the SEC. The SEC has posted its plan for analyzing FY 2016 data, a link to the FY 2016 government-wide Service Contract Inventory and the FY 2015 SCI Analysis on the SEC's homepage at *http://www.sec.gov/about/secreports.shtml* and *http://www.sec.gov/open.*

FOR FURTHER INFORMATION CONTACT: Direct questions regarding the service contract inventory to Vance Cathell, Director Office of Acquisitions (202) 551–8385 or *CathellV@sec.gov.*

Dated: September 22, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017–20879 Filed 9–28–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81697; File No. SR–NASDAQ–2017–095]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Features of the Enterprise License Set Forth at Rule 7047

September 25, 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 12, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees at Rule 7047 to expand the features of the enterprise license set forth at Rule 7047(b)(5).

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fees at Rule 7047 to expand the features of the enterprise license set forth at Rule 7047(b)(5). The proposed changes will: (i) Allow distribution of Nasdaq Basic data to certain Professional Subscribers that are currently excluded from the license; and (ii) permit the distribution of NLS data along with Nasdaq Basic data without paying per user, per query, per visitor or per household fees. This proposal, which also includes technical and conforming changes, will increase the features of this Nasdaq Basic enterprise license without changing its fee, thereby lowering the overall cost of the product.

Current Fee Structure

Nasdaq Basic provides best bid and offer and last sale information from the Nasdaq Market Center and the FINRA/Nasdaq Trade Reporting Facility (''FINRA/Nasdaq TRF''). It is a ''non-core'' product that provides a subset of the ''core'' last-sale data provided by securities information processors (''SIPs'') under the CTA Plan and the Nasdaq UTP Plan. Data is taken from three sources, which may be purchased individually or in combination: (i) Nasdaq Basic for Nasdaq, which contains the best bid and offer on the Nasdaq Market Center and last sale trade reports for Nasdaq and the FINRA/Nasdaq TRF for Nasdaq-listed stocks; (ii) Nasdaq Basic for NYSE, which contains the best bid and offer on the Nasdaq Market Center and last sale trade reports for Nasdaq and the FINRA/Nasdaq TRF for NYSE-listed stocks; and (iii) Nasdaq Basic for NYSE MKT, which contains the best bid and offer on the Nasdaq Market Center and last sale trade reports for Nasdaq and the FINRA/Nasdaq TRF for stocks listed on NYSE MKT and other listing venues whose quotes and trade reports are disseminated on Tape B.

User fees for Nasdaq Basic may be paid through per Subscriber monthly charges, per query fees, or two types of enterprise licenses: An internal enterprise license for Professional Subscribers at Rule 7047(b)(4) (for $365,000 per month); and an enterprise license for Non-Professional and Professional Subscribers with whom the broker-dealer has a brokerage relationship at Rule 7047(b)(5) (for $100,000 per month). The Exchange proposes to modify the second of these two enterprise licenses, at Rule 7047(b)(5), which allows the distribution of Nasdaq Basic, or Derived Data therefrom, to Professional and Non-Professional Subscribers who are natural persons and with whom the broker-dealer has a brokerage relationship. As a current condition of this license, Professional Users [sic] who receive data may not use that data within the scope of any professional engagement or registration. In addition, Nasdaq must approve any electronic system used to distribute such data, and a separate enterprise license must be purchased for each such system. Broker-dealers purchasing this license must also report the number of Subscribers at least once per year.

As noted above, the Exchange proposes to add NLS data as an additional feature to the Nasdaq Basic enterprise license at Rule 7047(b)(5). NLS provides real-time last sale information, including price, volume, and time of execution, for transactions on the Nasdaq Market Center or reported to the FINRA/Nasdaq TRF.[3] It is, like Nasdaq Basic, a non-core product that provides a subset of the core data provided by the SIPs under the CTA Plan and the Nasdaq UTP Plan. NLS was designed to ''increase[ ] the availability of NASDAQ proprietary market data to individual investors.'' [4] The Exchange does not explicitly offer an enterprise license for NLS, but has set a cap of $41,500 per month for NLS for Nasdaq and NLS for NYSE/NYSE MKT.

Proposed Changes

As explained above, the proposed changes will expand the features of the enterprise license set forth at Rule 7047(b)(5) by: (i) Allowing distribution of Nasdaq Basic data to certain Professional Users [sic] that are currently excluded from the license; and (ii) permitting the distribution of NLS data, along with Nasdaq Basic data, without paying per user, per query, per visitor or per household fees. The proposal will also include technical and conforming changes as described below.

The enterprise license at Rule 7047(b)(5) currently allows distribution of data to Professionals in the context of a brokerage relationship with the broker-dealer, and explicitly prohibits Professionals who receive data under that license from using it within the scope of a professional engagement or registration. The Exchange proposes to loosen that restriction by allowing the broker-dealer to make Nasdaq Basic data available to up to and including 4,500 internal Subscribers operating on approved electronic system for use by Professionals who work for the broker-dealer and use that data to provide brokerage services to investors. Use of the license for internal Subscribers will be limited to Professionals providing brokerage services to investors, but will not be available to any Professionals involved in proprietary trading, surveillance activities, or performing any other function solely for the benefit of the broker-dealer. Internal Subscribers may operate only on an approved electronic system to ensure that appropriate controls are in place to prevent use of the data by unauthorized personnel or for impermissible purposes. Any distribution to over 4,500 internal Subscribers, or any usage by Professional Users [sic] not in support of brokerage services to investors on an approved platform, would be subject to the applicable fees set forth in Rule 7047(b).

The difference between internal distribution of Nasdaq Basic through the

[3] *See* NASDAQ Rule 7039(a)–(c); *see also* Securities Exchange Act Release No. 71351 (January 17, 2014), 79 FR 4200 (Jan. 24, 2014) (SR–NASDAQ–2014–006) (notice of filing and immediate effectiveness regarding permanent approval of NLS).

[4] *See* SR–NASDAQ–2006–060 at 3 (Amendment No. 2, June 10, 2008) (available at *http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2006/SR-NASDAQ-2006-060_Amendment_2.pdf*); *see also* Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060) (approving SR–NASDAQ–2006–060, as amended by Amendment Nos. 1 and 2, to implement NLS on a pilot basis).

newly proposed $100,000 enterprise license at Rule 7047(b)(5), and internal distribution under the existing $365,000 license under Rule 7047(b)(4), is of magnitude and scope. The new license will be limited to 4,500 internal Professional Subscribers, whereas the number of internal Subscribers able to obtain data under the $365,000 enterprise license is not so limited.[5] In addition, use of the data by internal Professional Users [sic] under the proposed license will be limited to the provision of brokerage services to investors, whereas use of the data through the $365,000 license under Rule 7047(b)(4) is not limited to such services. Under the proposed rule, Professional Subscribers who do not obtain Nasdaq Basic through internal distribution, but rather through their own brokerage relationship with the broker-dealer, will still be prohibited from using such data within the scope of any professional engagement.

In addition to allowing distribution for up to 4,500 internal Subscribers, the Exchange also proposes to permit distribution of NLS data without paying the fees set forth in Rule 7039(b).[6] The Exchange does not currently offer an enterprise license for NLS, although there is a maximum distributor fee for any Distributor using the per user, per query, per visitor or per household pricing models of $41,500 per month. There are no additional restrictions on the use of NLS data under this license, although all other fees and restrictions other than the fees set forth in Rule 7039(b) will continue to apply.

The technical and conforming changes proposed by the Exchange are to: (i) Require broker-dealers purchasing the enterprise license at Rule 7047(b)(5) to report the number of Professional Subscribers on a monthly basis; (ii) clarify that Professional Users [sic] receiving Nasdaq Basic data through internal Subscribers (not in the context of their own brokerage relationship with the broker-dealer) are not prohibited from using the data within the scope of any professional engagement or registration; and (iii) replace references to ''NASDAQ,'' with all letters capitalized, with ''Nasdaq,'' in which only the first letter of the company is capitalized. All of these changes are necessary to support the primary fee changes sought by the Exchange, or to correct technical errors. The change in reporting is necessary to monitor the number of internal Subscribers receiving data. The clarification to the ability of Professionals to utilize Nasdaq Basic data is necessary to allow Professionals to effectively use the data in support of providing brokerage services to investors. The change from NASDAQ to Nasdaq is necessary to replace an older version of the Exchange's name.

The purpose of the proposed changes is to make the purchase of the enterprise license at Rule 7047(b)(5) more attractive to broker-dealers by adding features without increasing fees. The cost of the license will remain $100,000 per month, but services will be augmented by allowing internal distribution to up to 4,500 Professionals and including distribution of NLS to private investors. The proposal will lower the costs to broker-dealers of distributing Nasdaq Basic and NLS, thereby encouraging the dissemination of such data to individual investors.

The enterprise license at Rule 7047(b)(5) is optional in that Nasdaq is not required to offer it and broker-dealers are not required to purchase it. Firms can discontinue use at any time and for any reason, including an assessment of the fees charged.

The proposed change does not change the cost of any other Nasdaq product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [9]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [10] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[11] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [12]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [13]

The Exchange believes that the proposal to expand the features of the enterprise license set forth at Rule 7047(b)(5) without increasing fees is an equitable allocation of reasonable dues, fees and other charges in accordance with Section 6(b)(4) of the Act, and not designed to permit unfair discrimination between customers, issuers, brokers, or dealers in accordance with Section 6(b)(5) of the Act. As described above, the proposed changes will: (i) Allow distribution of Nasdaq Basic data to certain Professional Subscribers that are currently excluded from the license; and (ii) permit the distribution of NLS data along with Nasdaq Basic data without paying per user, per query, per visitor or per household fees. The proposal will provide greater value to the broker-dealers purchasing the enterprise license, and increase market transparency by lowering the cost of distributing both NLS and Basic to

[5] The enterprise license at Rule 7047(b)(4) allows distribution to 16,000 internal Professional Subscribers for no additional cost, with an additional charge of $2 for each internal Professional Subscriber above that level, provided that the broker-dealer obtains the license through an External Distributor that controls display of the product, and the broker-dealer obtains a separate license for each such External Distributor.

[6] The Exchange anticipates filing changes to Rule 7039 that would eliminate Distributor fees under Rule 7039(c) for any firm paying such a fee for Nasdaq Basic, effectively eliminating all NLS fees with the purchase of this enterprise license.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[10] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[11] *Id.* at 534–535.

[12] *Id.* at 537.

[13] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

investors. The proposal is an equitable allocation of reasonable dues, fees and other charges because the services will be the same for all broker-dealers that purchase the license. The services are not designed to permit unfair discrimination because all broker-dealers will be able to purchase the same license at the same price. As is the case for the current enterprise licenses, offering the enterprise license only to broker-dealers is not unfair discrimination because the license is primarily designed to allow data distribution to investors, and investors execute trades through broker-dealers. It is reasonable to limit use of the expanded enterprise license to internal Subscribers operating on approved platforms to ensure that the data is being used to support brokerage services for investors, rather than any other purpose. Moreover, enterprise license fees, like all market data fees, are constrained by the Exchange's need to compete for order flow, and are subject to competition from other exchanges and among broker-dealers for customers. If Nasdaq is incorrect in its assessment of price, it may lose market share as a result.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed changes will effectively lower the cost to broker-dealers to distribute NLS and Nasdaq Basic by expanding the features of the enterprise license set forth at Rule 7047(b)(5) without increasing fees. This proposal to lower costs is itself evidence of the need to maintain low prices is [sic] a competitive marketplace. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Market forces constrain the prices for NLS and Nasdaq Basic in two respects. First, market data fees are one element of the total cost of interacting with the Exchange and, if the price of these products were set above competitive levels, competition for order flow would be harmed. Second, the competition among broker-dealers for customers will provide another constraint on the cost of NLS and Nasdaq Basic.

Competition for Order Flow

Market data fees are constrained by competition among exchanges and other entities seeking to attract order flow. Order flow is the ''life blood'' of the exchanges. Broker-dealers currently have numerous alternative venues for their order flow, including self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers, which may readily reduce costs by directing orders toward the lowest-cost trading venues.

The level of competition and contestability in the market for order flow is demonstrated by the numerous examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and BATS/Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume. For a variety of reasons, competition from new entrants, especially for order execution, has increased dramatically over the last decade.

Each SRO, TRF, ATS, and broker-dealer that competes for order flow is permitted to produce proprietary data products. Many currently do or have announced plans to do so, including NYSE, NYSE Amex, NYSE Arca, BATS, and IEX. This is because Regulation NMS deregulated the market for proprietary data. While broker-dealers had previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Order routers and market data vendors can facilitate production of proprietary data products for single or multiple broker-dealers. The potential sources of proprietary products are virtually limitless.

The markets for order flow and proprietary data are inextricably linked: a trading platform cannot generate market information unless it receives trade orders. As a result, the competition for order flow constrains the prices that platforms can charge for proprietary data products. Firms make decisions on how much and what types of data to consume based on the total cost of interacting with Nasdaq and other exchanges. The cost of market data is one factor in this total platform analysis. A supracompetitive price for NLS and Nasdaq Basic has the potential to impair competition for order flow, and the need to compete effectively for order flow will constrain its price.

Competition for Customers

Broker-dealers that purchase NLS and Nasdaq Basic are in competition for customers. If the price of these products were set above competitive levels, the broker-dealers that purchase these products would be at a disadvantage relative to their competitors. As such, they may lower costs by curtailing their purchases of Nasdaq products, thereby providing a constraint on the price of NLS and Nasdaq Basic.

In summary, market forces constrain the price of NLS and Nasdaq Basic through competition for order flow and in the competition among broker-dealers for customers. For these reasons, the Exchange has provided a substantial basis for demonstrating that the fee is equitable, fair, reasonable, and not unreasonably discriminatory, and that it is therefore consistent with and in furtherance of the purposes of the Exchange Act

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–095 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–095. 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–NASDAQ–2017–095 and should be submitted on or before October 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–20886 Filed 9–28–17; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81686; File No. SR–NYSEArca–2017–05]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3 Thereto, To List and Trade Shares of Direxion Daily Crude Oil Bull 3x Shares and Direxion Daily Crude Oil Bear 3x Shares Under NYSE Arca Equities Rule 8.200

September 22, 2017.

I. Introduction

On January 23, 2017, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of Direxion Daily Crude Oil Bull 3x Shares and Direxion Daily Crude Oil Bear 3x Shares (individually, ''Fund,'' and, collectively, ''Funds'') Under NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on February 7, 2017.[3] On March 16, 2017, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On May 5, 2017, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] On June 23, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.[7] On July 27, 2017, the Commission designated a longer period for Commission action on the proposed rule change.[8] On August 1, 2017, the Exchange filed Amendment No. 2 to the proposed rule change.[9] On September 19, 2017, the Exchange filed Amendment No. 3 to the proposed rule change.[10] The Commission has received

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79916 (February 1, 2017), 82 FR 9608.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 80265, 82 FR 14778 (March 22, 2017).

[6] *See* Securities Exchange Act Release No. 80606, 82 FR 22042 (May 11, 2017). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' *See id.* at 22043.

[7] Amendment No. 1, which amended the replaced the original filing in its entirety, is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nysearca-2017-05/nysearca201705-1822806-154288.pdf.*

[8] *See* Securities Exchange Act Release No. 81224, 82 FR 36030 (August 2, 2017).

[9] In Amendment No. 2, which amended and replaced the proposed rule change, as modified by Amendment No. 1 thereto, in its entirety, the Exchange: (1) Supplemented its descriptions of the Funds' investments in over-the-counter transactions and Short-Term Investments; (2) supplemented its description of the calculation of the daily value of each Fund's net asset value (''NAV''); (3) provided information regarding the calculation and dissemination of the Indicative Fund Value of the Funds; (4) added a representation regarding the dissemination of the Benchmark; (5) clarified the information that will be made available on the Funds' Web site regarding the Funds and their portfolio holdings; (6) supplemented its description of the Exchange's surveillance procedures; (7) represented that the applicability of Exchange listing rules specified in the proposed rule change shall constitute continued listing requirements for listing the Shares on the Exchange; (8) clarified the type of information that will be available in the Information Bulletin regarding the Funds' portfolio holdings; and (9) made other technical changes. Amendment No. 2 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues. Amendment No. 2 to the proposed rule change is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nysearca-2017-05/nysearca201705-2161993-157780.pdf.*

[10] In Amendment No. 3, which partially amended the proposed rule change, as modified by Amendment No. 2 thereto, the Exchange made representations regarding the size and liquidity of the oil contract market. Amendment No. 3 is not subject to notice and comment because it does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

Continued

no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment Nos. 2 and 3 thereto.

II. Exchange's Description of the Proposal [11]

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.200, Commentary .02, which governs the listing and trading of Trust Issued Receipts.[12] Each Fund is a series of the Direxion Shares ETF Trust II (''Trust''), a Delaware statutory trust.[13] The Trust and the Funds are managed and controlled by Direxion Asset Management, LLC (''Sponsor''). The Sponsor is registered as a commodity pool operator with the Commodity Futures Trading Commission (''CFTC'') and is a member of the National Futures Association. Bank of New York Mellon will be the custodian and transfer agent for the Funds. U.S. Bancorp Fund Services, LLC serves as administrator for the Funds, and Foreside Fund Services, LLC serves as the distributor of the Funds.

Overview of the Funds

The investment objective of Direxion Daily Crude Oil Bull 3X Shares is to seek, on a daily basis, investment results that correspond (before fees and expenses) to a multiple of three times (3x) of the daily performance of the Bloomberg WTI Crude Oil Subindex, a subindex of the Bloomberg Commodity Index (''Benchmark'').[14] The investment objective of Direxion Daily Crude Oil Bear 3X Shares is to seek, on a daily basis, investment results that correspond (before fees and expenses) to three times (3x) the inverse of the performance of the Benchmark. The Benchmark is intended to reflect the performance of crude oil as measured by the price of West Texas Intermediate crude oil futures contracts traded on the New York Mercantile Exchange (''NYMEX''), including the impact of rolling, without regard to income earned on cash positions. The Funds will not be directly linked to the ''spot'' price of crude oil. The Exchange states that a Fund will not seek to achieve its investment objective over a period greater than a single trading day.[15]

In seeking to achieve the Funds' investment objectives, the Sponsor will utilize a mathematical approach to determine the type, quantity, and mix of investment positions that the Sponsor believes, in combination, should produce daily returns consistent with the Funds' respective objectives. The Sponsor will rely on a pre-determined model to generate orders that result in repositioning the Funds' investments in accordance with their respective investment objectives.

Investments of the Funds

Each Fund will seek to achieve its respective investment objective by investing, under normal market conditions,[16] substantially all of its assets in oil futures contracts traded in the U.S. and listed options on such contracts (collectively, ''Futures Contracts''). The Funds' investments in Futures Contracts will be used to produce economically ''leveraged'' or ''inverse leveraged'' investment results for the Funds.

In the event position, price, or accountability limits are reached with respect to Futures Contracts,[17] each Fund may obtain exposure to the Benchmark through investment in swap transactions and forward contracts referencing such Benchmark or other benchmarks the Sponsor believes should be closely correlated to the performance of each Fund's benchmark such as the Energy Select Sector Index or the S&P Oil & Gas Exploration & Production Select Industry Index (''Financial Instruments''). To the extent that the Trust invests in Financial Instruments, it would first make use of exchange-traded Financial Instruments, if available. If an investment in exchange-traded Financial Instruments is unavailable, then the Trust would invest in Financial Instruments that clear through derivatives clearing organizations that satisfy the Trust's criteria, if available. If an investment in cleared Financial Instruments is unavailable, then the Trust would invest in other Financial Instruments, including uncleared Financial Instruments in the over-the-counter (''OTC'') market. The Funds may also invest in Financial Instruments if the market for a specific futures contract experiences emergencies (*e.g.,* natural disaster, terrorist attack, or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash) that prevent or make it impractical for a Fund to obtain the appropriate amount of investment exposure using Futures Contracts.

The Exchange represents that each Fund will enter into swap agreements and other OTC transactions only with large, established, and well capitalized financial institutions that meet certain credit quality standards and monitoring policies. The Exchange states that each Fund will use various techniques to minimize credit risk including early termination or reset and payment, using different counterparties and limiting the net amount due from any individual counterparty.[18]

Although the Funds will invest such that each Fund's exposure to the Benchmark will consist substantially of

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Amendment No. 3 to the proposed rule change is available on the Commission's Web site at: *https://www.sec.gov/comments/sr-nysearca-2017-05/nysearca201705-2583842-161105.pdf.*

[11] A more detailed description of the Funds, the Shares, and the Benchmark, as well as investment risks, creation and redemption procedures, NAV calculation, availability of values and other information regarding the Funds' portfolio holdings, and fees, among other things, is included in the Registration Statement (as defined herein), as well as Amendment No. 2 to the proposed rule change, as applicable. *See infra* note 13, and *supra* note 9, respectively.

[12] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, 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.

[13] The Trust is registered under the Securities Act of 1933 (''Securities Act''). According to the Exchange, on December 14, 2016, the Trust filed with the Commission a registration statement on Form S–1 under the Securities Act relating to the Funds (File No. 333–215091) (''Registration Statement'').

[14] According to the Exchange, the Bloomberg WTI Crude Oil Subindex is a ''rolling index,'' which means that the index does not take physical possession of any commodities. The Exchange states that futures contracts held by the Funds near expiration are generally closed out and replaced by contracts with a later expiration as required by the Bloomberg WTI Crude Oil Subindex. The Exchange states that this process is referred to as ''rolling.'' *See* Amendment No. 2, *supra* note 9, at 5 n.6–7.

[15] According to the Exchange, a single trading day is measured from the time a Fund calculates its NAV to the time of a Fund's next NAV calculation. The Exchange states that the return of a Fund for a period longer than a single trading day is the result of its return for each day compounded over the period and thus will usually differ from a Fund's multiple times the return of the Benchmark for the same period. *See id.* at 5 n.8–9.

[16] The term ''normal market conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. *See id.* at 6 n.10.

[17] According to the Exchange, U.S. futures exchanges have established accountability levels and position limits on the maximum net long or net short Futures Contracts in commodity interests that any person or group of persons under common trading control (other than as a hedge, which an investment by a Fund is not) may hold, own or control. These levels and position limits apply to the Futures Contracts that each Fund would invest in to meet its investment objective. In addition to accountability levels and position limits, U.S. futures exchanges also set daily price fluctuation limits on Futures Contracts. The daily price fluctuation limit establishes the maximum amount that the price of a Futures Contract may vary either up or down from the previous day's settlement price. *See id.* at 7–8.

[18] *See id.* at 6–7.

Futures Contracts, the Funds' remaining net assets may be invested in cash or cash equivalents and/or U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds and collateralized repurchase agreements, collectively, ''Short-Term Investments'') for direct investment or as collateral for the Funds' investments.

The Funds do not intend to hold Futures Contracts through expiration, but instead intend to either close or ''roll'' their respective positions. When the market for these contracts is such that the prices are higher in the more distant delivery months than in the nearer delivery months, the sale during the course of the ''rolling process'' of the more nearby contract would take place at a price that is lower than the price of the more distant contract.[19]

The Exchange states that the Funds do not expect to have leveraged exposure greater than three times (3x) the Funds' net assets. Thus, the maximum margin held at a Future Commission Merchant would not exceed three times the margin requirement for either Fund.[20] The Exchange represents that not more than 10% of the net assets of a Fund in the aggregate invested in Futures Contracts shall consist of Futures Contracts whose principal market is not a member of the Intermarket Surveillance Group (''ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement (''CSSA'').[21]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3 thereto, is consistent with Section 6(b)(5) of the Exchange Act,[23] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[24] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.

According to the Exchange, quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA''). Quotation information for Short-Term Investments and OTC swaps may be obtained from brokers and dealers who make markets in such instruments, and intra-day price information for forward contracts will be available from major market data vendors. Quotation information for exchange-traded swaps will be available from the applicable exchange and major market vendors. The intraday, closing prices, and settlement prices of the Futures Contracts 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 the Futures Contracts also is available by subscription through on-line information services. ICE Futures U.S. and NYMEX also provide delayed futures and options on futures information on current and past trading sessions and market news free of charge on their respective Web sites. The specific contract specifications for Futures Contracts would also be available on such Web sites, as well as other financial informational sources.

The Funds' Web site will display the applicable end of day closing NAV. Each Fund's total portfolio composition will be disclosed on the Funds' Web site each business day that the Exchange is open for trading. The Funds' Web site also will include a form of the prospectus for the Funds that may be downloaded. The Web site will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for each Fund.[25] The Web site disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, value, expiration and strike price of Futures Contracts and Financial Instruments, (ii) the counterparty to and value of Financial Instruments, and (iii) the aggregate net value of the Short-Term Investments held in each Fund's portfolio, if applicable.

The Benchmark 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. Eastern Time (''E.T.''). The Indicative Fund Value (''IFV'') [26] will be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session Share will be widely disseminated by one or more major market data vendors every 15 seconds during the Exchange's Core Trading Session.[27] Each Fund will compute its NAV at 2:30 p.m. E.T., which is the designated closing time of

[19] The Exchange states that the pattern of higher futures prices for longer expiration Futures Contracts is referred to as ''contango.'' Alternatively, when the market for these contracts is such that the prices are higher in the nearer months than in the more distant months, the sale during the course of the ''rolling process'' of the more nearby contract would take place at a price that is higher than the price of the more distant contract. The Exchange states that the pattern of higher futures prices for shorter expiration Futures Contracts is referred to as ''backwardation.'' According to the Exchange, the presence of contango in certain Futures Contracts at the time of rolling could adversely affect a Fund with long positions, and positively affect a Fund with short positions. Similarly, the Exchange states that the presence of backwardation in certain Futures Contracts at the time of rolling such contracts could adversely affect a Fund with short positions and positively affect a Fund with long positions. *See id.* at 7.

[20] *See id.* at 8.

[21] *See id.* at 13.

[22] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[25] The Funds' Web site will include (1) daily trading volume, the prior business day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (''Bid/Ask Price'') against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters.

[26] The IFV will be calculated by using the prior day's closing net assets of a Fund as a base and updating throughout the Exchange's Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. changes in the value of the Futures Contracts and Financial Instruments held by a Fund based on the most recently available prices for the Fund's investments. According to the Exchange, circumstances may arise in which the NYSE Arca Core Trading Session is in progress, but trading in Futures Contracts is not occurring. Such circumstances may result from reasons including, but not limited to, a futures exchange having a separate holiday schedule than the NYSE Arca, a futures exchange closing prior to the close of the NYSE Arca, price fluctuation limits being reached in a Futures Contract, or a futures exchange, imposing any other suspension or limitation on trading in a Futures Contract. In such instances, for IFV calculation purposes, the price of the applicable Futures Contracts, as well as Financial Instruments whose price is derived from the Futures Contracts, would be static or priced by the Fund at the applicable early cut-off time of the exchange trading the applicable Futures Contract. *See* Amendment No. 2, *supra* note 9, at 7 n.13.

[27] The Exchange notes that several major market data vendors display and/or make widely available IFVs taken from the CTA or other data feeds. *See id.*

the crude oil futures market on NYMEX,[28] or if the New York Stock Exchange (''NYSE'') closes earlier than 2:30 p.m. E.T., each Fund will compute its NAV at the time the NYSE closes. The NAV for the Funds' Shares will be disseminated daily to all market participants at the same time.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. 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. Further, the Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Benchmark occurs. If the interruption to the dissemination of the IFV or the value of the Benchmark persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 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 inadvisable. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[29] Moreover, trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, 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 Commission notes that the Exchange or the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain Futures Contracts 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 certain Futures Contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain Futures Contracts from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA.[30] The Exchange is also able to obtain information regarding trading in the Shares, the physical commodities underlying Futures Contracts through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in cash-settled options on Futures Contracts) occurring on U.S. futures exchanges, which are members of the ISG.

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. In support of this proposal, the Exchange represented that:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.200.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

(4) 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: (a) 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; (b) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IFV is disseminated; (e) how information regarding portfolio holdings is disseminated; (f) that a static IFV will be disseminated, between the close of trading on the ICE Futures U.S. and NYMEX and the close of the NYSE Arca Core Trading Session; (g) 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 (h) trading information.

(5) For initial and continued listing, each Fund will be in compliance with Rule 10A–3 under the Act,[31] as provided by NYSE Arca Equities Rule 5.3.

(6) Each Fund will seek to achieve its respective investment objective by investing, under normal market conditions, substantially all of its assets in Futures Contracts. In the event position, price or accountability limits are reached with respect to Futures Contracts, each Fund may obtain exposure to the Benchmark through investments in Financial Instruments. To the extent that the Trust invests in Financial Instruments, it would first make use of exchange-traded Financial Instruments, if available. If an investment in exchange-traded Financial Instruments is unavailable, then the Trust would invest in Financial Instruments that clear through derivatives clearing organizations that satisfy the Trust's criteria, if available. If an investment in cleared Financial Instruments is unavailable, then the Trust would invest in other Financial Instruments, including uncleared Financial Instruments in the OTC market.

(7) The oil contract market is of significant size and liquidity, and has average daily volume of 650,000 contracts and daily open interest of 450,000 contracts. The Sponsor is registered as a commodity pool operator with the CFTC and is a member of the National Futures Association, and the Information Bulletin will reference that the CFTC has regulatory jurisdiction over the trading of Futures Contracts traded on U.S. markets.

(8) Not more than 10% of the net assets of a Fund in the aggregate invested in Futures Contracts shall consist of Futures Contracts whose principal market is not a member of the

[28] The Exchange states that the daily value of the NAV is calculated as of 2:30 p.m. E.T. to coincide with the designated closing time. Futures Contracts, however, continue to trade past 2:30 p.m. E.T. and through the end of the NYSE Arca Core Trading Session at 4:00 p.m. E.T. *See id.* at 8 n.12.

[29] *See id.* at 13.

[30] For a list of the current members of ISG, *see www.isgportal.org.* According to the Exchange, not all components of a Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA. *See id.* at 13 n.18.

[31] 17 CFR 240.10A–3.

ISG or is a market with which the Exchange does not have a CSSA.

(9) Each Fund will enter into swap agreements and other OTC transactions only with large, established and well capitalized financial institutions that meet certain credit quality standards and monitoring policies. Each Fund will use various techniques to minimize credit risk including early termination or reset and payment, using different counterparties and limiting the net amount due from any individual counterparty.

(10) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in this filing regarding (a) the description of the portfolios of the Funds or Benchmark, (b) limitations on portfolio holdings or the Benchmark, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds 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.[32] If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

This approval order is based on all of the Exchange's representations and description of the Funds, including those set forth above and in Amendment No. 2 to the proposed rule change. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3 thereto, is consistent with Section 6(b)(5) of the Act[33] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[34] that the proposed rule change (SR–NYSEArca–2017–05), as modified by Amendment Nos. 2 and 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Eduardo A. Aleman,

Assistant Secretary.

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BILLING CODE 8011–01–P

[32] The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428 (April 7, 2016) (Notice of Filing of Amendment No. 2, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the SPDR DoubleLine Short Duration Total Return Tactical ETF of the SSgA Active Trust), available at: *http://www.sec.gov/rules/sro/bats/2016/34-77499.pdf.* In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81713; File No. SR–NYSEArca–2017–109]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rule 14.2 To Make Technical and Conforming Updates in Connection With the Recent Merger of NYSE Arca Equities, Inc. With and Into the Exchange

September 25, 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 12, 2017, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 14.2 (Liability of Exchange) to make technical and conforming updates in connection with the recent merger of NYSE Arca Equities, Inc. (''NYSE Arca Equities'') with and into the Exchange.

The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Rule 14.2 to make technical and conforming updates in connection with the recent merger of its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'') with and into the Exchange (the ''Merger'').

On June 2, 2017, the Exchange filed rule changes with the Securities and Exchange Commission (''Commission'') in connection with the proposed Merger (the ''Original Filing'').[4] On August 15, 2017, the Exchange filed a partial amendment to the Original Filing (the ''Amendment''), which, among other things, amended the Original Filing to reflect changes to the proposed rule text that resulted from changes to the NYSE Arca and NYSE Arca Equities rules that became operative after June 2, 2017.[5] On

[4] *See* Securities Exchange Act Release No. 80929 (June 14, 2017), 82 FR 28157 (June 20, 2017) (SR–NYSEArca–2017–40) (''Notice'').

[5] *See* Partial Amendment 2 to SR–NYSEArca–2017–40 (August 15, 2017). The Amendment also was submitted to the Commission as a comment letter on the Original Filing. *See* letter from Martha Redding, Associate General Counsel, NYSE Group, to Brent J. Fields, Secretary, Commission (August 15, 2017), available at *https://www.sec.gov/*

Continued

August 17, 2017, the Commission approved the proposed rule changes, as amended, and the Merger occurred on that same date.[6]

Prior to the Merger, NYSE Arca had two rulebooks: The NYSE Arca rules for its options market and the NYSE Arca Equities rules for its equities market. At the Merger, the NYSE Arca Equities rules were integrated into the NYSE Arca rules, so that there is now one NYSE Arca rulebook.[7] In that process, NYSE Arca Rule 14 (Liability of Directors and Exchange) was amended to incorporate NYSE Arca Equities Rule 13 (Liability of Directors and Corporation).[8]

On July 24, 2017, the Commission approved a proposed rule change to amend NYSE Arca Equities Rule 13.2 (Liability of Corporation).[9] Because such rule change was approved after the Original Filing but prior to the Merger, it should have been included in the Amendment. However, due to an oversight, the Amendment did not incorporate the changes to NYSE Arca Equities Rule 13.2 into NYSE Arca Rule 14.2.[10] Accordingly, the Exchange proposes to make technical and conforming changes to NYSE Arca Rule 14.2 in order to conform it to the text of previous NYSE Arca Equities Rule 13.2 approved by the Commission on July 24, 2017.[11]

More specifically, the Exchange proposes to:

• Amend Rule 14.2(a) to provide that the limitation of liability set forth in that paragraph would apply to ''successors, representatives, or customers'' of Equities Trading Permit holders (''ETP Holders''), Options Trading Permit holders (''OTP Holders'') and Options Trading Permit firms (''OTP Firms'') of the Exchange, consistent with previous NYSE Arca Equities Rule 13.2(a);

• Amend Rule 14.2(b), which describes certain prerequisites for qualifying for compensation, to replace the words ''acknowledged receipt of'' with the word ''received,'' consistent with previous NYSE Arca Equities Rule 13.2(b);

• Amend Rule 14.2(b) and (c) to eliminate the daily caps on liability, consistent with previous NYSE Arca Equities Rule 13.2(b) and (c); and

• Amend Rule 14.2(c) and add a new Rule 14.2(d) to change the procedural requirements for submitting notification to the Exchange of any claims for compensation, consistent with previous NYSE Arca Equities Rule 13.2(c) and (d). As a technical change, the obsolete reference to the ''Corporation'' in NYSE Arca Equities Rule 13.2(d), which referred to NYSE Arca Equities, would be updated to refer to the ''Exchange'' in new Rule 14.2(d).[12]

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[13] in general, and with Section 6(b)(1) [14] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed change to Rule 14.2 would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because, by incorporating the amendments to NYSE Arca Equities Rule 13.2 that the Commission approved on July 24, 2017, the proposed change would ensure that the changes made to Rule 14.2 to reflect the Merger were accurate and complete.

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system in general, to protect investors and the public interest, because, by incorporating the amendments to NYSE Arca Equities Rule 13.2 that the Commission approved on July 24, 2017, the proposed change would ensure that the changes made to Rule 14.2 to reflect the Merger were accurate and complete, thereby reducing potential investor or market participant confusion. The proposed change would clarify the scope of the limitation of liability, including the elimination of daily liability caps and applicable procedural requirements, for all ETP Holders, OTP Holders, and ETP Firms [sic], and ensure that all Exchange permit holders would be subject to the same rule.[16]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[17] in general, and with Section 6(b)(1) [18] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed change to Rule 14.2 would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because, by incorporating the amendments to NYSE Arca Equities Rule 13.2 that the Commission approved on July 24, 2017, the proposed change would ensure that the changes made to Rule 14.2 to reflect the Merger were accurate and complete.

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the

comments/sr-nysearca-2017-40/nysearca201740-2221802-160732.pdf.

[6] *See* Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR–NYSEArca–2017–40) (Approval Order).

[7] *See id.* at 40044.

[8] *See id.* at 40048.

[9] *See* Securities Exchange Act Release No. 81197 (July 24, 2017), 82 FR 35244 (July 28, 2017) (SR–NYSEArca–2017–46) (Approval Order).

[10] The Amendment updated NYSE Arca Equities Rule 13.2 in Exhibit 5I to Original Filing to reflect the changes made in SR–NYSEArca–2017–46. *See* Item 19 of the Amendment, *supra* note 5, at 13–15. Exhibit 5I set forth the NYSE Arca Equities Rules, which were deleted in their entirety at the time of the Merger.

[11] The Exchange notes that during the period between the Merger and the date of the present filing, it did not receive a claim that exceeded the liability limits and thus the Exchange was not prevented from fully compensating an ETP Holder for losses suffered in connection with the use of the Exchange's facilities, including losses caused by the negligent act or omission of an Exchange employee.

[12] *See* Notice, *supra* note 4, at 28161 (noting that in rule text based on NYSE Arca Equities rules, references to the Corporation would be replaced with references to the Exchange).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(1).

[15] 15 U.S.C. 78f(b)(5).

[16] The Commission notes that NYSE Arca Rule 14.2 applies to ETP Holders, OTP Holders, and OTP Firms.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(1).

Act,[19] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system in general, to protect investors and the public interest, because, by incorporating the amendments to NYSE Arca Equities Rule 13.2 that the Commission approved on July 24, 2017, the proposed change would ensure that the changes made to Rule 14.2 to reflect the Merger were accurate and complete, thereby reducing potential investor or market participant confusion. The proposed change would clarify the scope of the limitation of liability, including the elimination of daily liability caps and applicable procedural requirements, for all ETP Holders, OTP Holders, and ETP Firms [sic], and ensure that all Exchange permit holders would be subject to the same rule.[20]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with updating Rule 14.2 to reflect the previously approved amendments to NYSE Arca Equities Rule 13.2, ensuring that all Exchange permit holders would be subject to the same rules.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that such waiver would allow the Exchange to implement without further delay the previously-approved amendments to NYSE Arca Equities Rule 13.2 and would ensure continuity in the Exchange's treatment of ETP Holders, as ETP Holders subject to NYSE Arca Rule 14.2 would be subject to the same limitations of liability as they were under NYSE Arca Equities Rule 13.2 prior to the Merger, including the elimination of daily liability caps. In addition, the Exchange notes that the proposed rule change would clarify the scope of its limitation of liability rule, including the elimination of daily liability caps and applicable procedural requirements, for all ETP Holders, OTP Holders, and OTP Firms, and ensure that all Exchange permit holders would be subject to the same rule.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative delay will help ensure consistent treatment of ETP Holders, OTP Holders, and OTP Firms under NYSE Arca Rule 14.2 and help avoid the potential for confusion as to the applicable limitations of liability with respect to that rule. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing with the Commission.[25]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[26] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2017–109 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–2017–109. 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

[19] 15 U.S.C. 78f(b)(5).

[20] *See supra* note 16.

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2)(B).

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–2017–109 and should be submitted on or before October 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–20888 Filed 9–28–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81714; File No. SR–CBOE–2017–062]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Permit the Exchange To Publish End-of-Day Indicative Values in SPX After the Close of Regular Trading Hours in SPX

September 25, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2017, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a process for disseminating two-sided indicative values in non-expiring series of S&P 500 Index (''SPX'') options, when necessary, in the interests of fair and orderly markets (''End-of-Day Indicative Values'').

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Interpretation and Policy .06 to Rule 6.2B (Hybrid Opening (and Sometimes Closing) System (''HOSS'')) to establish its aftermarket procedure for generating two-sided indicative values in certain series of SPX options (including series of SPX and SPXW). Specifically, proposed paragraph (a) would contain the current text of Interpretation and Policy .06 to Rule 6.2B, which the Exchange is not proposing to change, regarding the Exchange's end-of-month process for disseminating after the close of trading bid and offer quotations that reflect a designated Lead Market-Maker's (''LMM's'') calculated theoretical fair value of non-expiring series of SPX options as of time of the close of trading in the underlying cash market on the last business day of each calendar month. Proposed paragraph (b) of Interpretation and Policy .06 to Rule 6.2B would establish the Exchange's process for generating two-sided indicative values for non-expiring series of SPX options when the Exchange determines that it is necessary to publish such values in the interests of fair and orderly markets on trading days other than the final business day of a calendar month. The specific provisions of proposed paragraph (b) to Interpretation and Policy .06 to Rule 6.2B are discussed in detail below.

Background

The Exchange's opening and closing procedures are codified in Rules 6.2 (Trading Rotations), 6.2B (Hybrid Opening System (''HOSS'')), and 24.13 (Trading Rotations).[5] In addition to describing the Exchange's normal opening and closing procedures, the Rules also provide for deviations from the Exchange's regular opening and closing procedures, which, from time-to-time, the Exchange employs in the interests of fair and orderly markets under certain circumstances.[6] Pursuant to Rules 6.2, 6.2A, 6.2B and 24.13, the Exchange may, in the interests of a fair and orderly market, decide to employ special closing procedures after the normal close of a trading session.[7] For example, Interpretation and Policy .02 to Rule 6.2 provides that a closing trading rotation may be conducted in non-expiring options whenever two Floor Officials conclude, in their judgment, that such action is

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Additional opening procedures for classes that are not traded on the Hybrid Trading System are also contained in Rule 6.2A (Rapid Opening System). The ''Hybrid Trading System'' refers to the Exchange's trading platform that allows Market-Makers to submit electronic quotes in their appointed classes and any connectivity to the foregoing trading platform that is administered by or on behalf of the Exchange, such as a communications hub. ''Hybrid 3.0 Platform'' is an electronic trading platform on the Hybrid Trading System that allows one or more quoters to submit electronic quotes which represent the aggregate Market-Maker quoting interest in a series for the trading crowd. References to ''Hybrid,'' ''Hybrid System,'' or ''Hybrid Trading System'' in the Exchange's Rules include all platforms unless otherwise provided by rule, including both the Hybrid and Hybrid 3.0 platforms. *See* Rule 1.1(aaa) (Definitions—Hybrid Trading System). Currently, all classes traded on the Exchange are traded on the Hybrid System as defined under Rule 1.1(aaa), with standard SPX options contracts being the only group of series of any class that is traded on the Hybrid 3.0 Platform.

[6] Although Rule 6.2 pertains to trading rotations, Interpretation and Policy .02 to Rule 6.2 provides that the Designated Primary Market-Maker (''DPM'') or LMM appointed in the class may deviate from any rotation policy or procedure issued by the Exchange with the approval of two Floor Officials. Rule 6.2B(h) is silent as to the type of closing procedure that may be employed in the interests of a fair and orderly market. Rule 24.13 references Rules 6.2 and 6.2B, indicating that the procedures set forth in those rules may be employed with respect to index options.

[7] *See* Rules 6.2.02, 6.2.03, 6.2.05, 6.2B(h), 6.2B(f), and 24.13.01.

appropriate. Among the factors that may be considered in determining whether to conduct a closing rotation are whether there has been a recent opening or reopening of trading in the underlying security, a declaration of a ''fast market'' pursuant to Rule 6.6,[8] a need for a rotation in connection with expiring individual security options, an end of the year rotation, or the restart of a rotation which is already in progress.[9] Notably, Interpretation and Policy .02 to Rule 6.2 explicitly provides that the list of examples identified as factors that may be considered in determining whether to employ a closing rotation are exemplary, not exhaustive. In addition, Rule 6.2 expressly provides that the DPM or LMM appointed in the class may, with the approval of senior Help Desk personnel, deviate from any rotation policy or procedure issued by the Exchange. Such deviations from normal policies and procedures may include, for example, determinations to employ abbreviated closing rotation procedures pursuant to Interpretation and Policy .04 to Rule 6.2.

Similarly, Rule 6.2B(g) permits the Exchange to employ a closing rotation in series traded on the Hybrid Trading System. Under Rule 6.2B(h), the Exchange may decide to employ a closing rotation in a series after the end of the normal close of any trading session whenever the Exchange concludes that such action is appropriate in the interests of a fair and orderly market. Similar to Interpretation and Policy .02 to Rule 6.2, the list of factors that may be considered in determining whether to hold a closing rotation procedure include, but are not limited to, whether there has been a recent opening or reopening of trading in the underlying security, a declaration of a fast market, or a need for a closing procedure in connection with expiring individual security options, an end of the year procedure, or the restart of a procedure which is already in progress. Rule 6.2B(g) provides that senior Help Desk personnel and senior management may deviate from the standard manner of conducting a closing rotation in any option class if necessary in the interests of maintaining a fair and orderly market. Similarly, Rule 24.13 extends the closing rotation procedures in Rules 6.2 and 6.2B to index options products.[10]

In general, the Exchange's end-of-day bid and offer quotations are determined based on actual bids and offers displayed in market as of the close of trading on the Exchange. These final end-of-day bids and offer are used by various market participants, which may include broker-dealers, mutual funds, hedge funds, advisory firms, and clearing houses, for different business and risk-related functions such as portfolio performance analyses, daily profit and loss reports. On certain trading days, however, market conditions may cause Market-Makers to widen or remove their quotes from the market during the final moments of trading in order to mitigate the risk and uncertainty associated with carrying overnight positions and the possibility of hedges being unavailable to offset such risk after the close of trading. Additionally, synchronization issues may cause Market-Makers to widen or remove their quotes from the market during the final moments of trading if their feed from the underlying futures markets are not synchronized with the Exchange's close of trading. In these instances, resulting quotations may not reflect true market pricing, which may artificially affect the Net Asset Value (''NAV'') of mutual funds, portfolio managers' performance indicators, and institutional and retail capital requirements. Consistent with the discretion afforded to the Exchange under Rules 6.2A, 6.2B, and 24.13, as discussed above, the Exchange may conduct special closing procedures to ensure that the end-of-day pricing is consistent with actual market conditions as of the close of trading if it concludes that deviation from the Exchange's standard closing procedures is appropriate in the interests of fair and orderly markets. In such cases, in addition to publishing the actual end-of-day bid and offer quotations displayed in market as of the close of trading, the Exchange provides notice to Trading Permit Holders (''TPHs'') that a second set of quotations, determined based on an objectively selected Market-Maker's algorithmically generated bid and offer quotations in affected series, will be disseminated after the close of trading pursuant to special closing procedures. In an effort to enhance and increase transparency around the end-of-day process, the Exchange proposes to change the way that it deals with wide and absent quotations in non-expiring series of SPX on days other than the final business day of each calendar month by adding to the Rules a procedure for disseminating clearly marked two-sided indicative values, derived from previously displayed firm quotations and orders or generally accepted volatility and options pricing models after the close of trading.

Proposal

The Exchange proposes to adopt paragraph (b) to Interpretation and Policy .06 to Rule 6.2B to describe its end-of-day process for formulating two-sided indicative values for certain series of SPX options when necessary in the interests of fair and orderly markets. Specifically, proposed paragraph (b) of Interpretation and Policy .06 to Rule 6.2B would provide that following the close of trading on any trading day that is not the last business day of a calendar month, in addition to the Exchange's regular end-of-day quotations, the Exchange may determine, on a series-by-series basis, to disseminate two-sided indicative values in non-expiring series of SPX options in the interests of fair and orderly markets. Under the proposed rule, the determination to disseminate two-sided end-of-day indicative values would be made by the Exchange based on various sets of objective criteria such as the absence of any bid or offer in the series, whether the bid-ask differential in a series is unreasonably or extraordinarily wide in relation to the quote widths that existed in series during trading, or whether the midpoint between the quotes in the series moved by a certain amount within the final moments of trading.[11]

The Exchange would algorithmically derive such two-sided indicative values, on a series-by-series basis, based on the last displayed quotations and orders that meet an objective measure of reasonability (*e.g.,* quotes and orders

[8] *See* Rule 6.6(a) (Unusual Market Conditions) (Whenever in the judgment of any two Floor Officials, because of an influx of orders or other unusual conditions or circumstances, the interest of maintaining a fair and orderly market so require, those Floor Officials may declare the market in one or more classes of option contracts to be ''fast.'').

[9] *See* Rule 6.2.02.

[10] Under Rule 24.13 (Trading Rotations), the Exchange may provide for the opening rotation to be conducted using the procedures as described in this Rule 24.13 or in Rule 6.2, or by use of the Exchange's Rapid Opening System as set forth in Rule 6.2A or the Exchange's Hybrid Opening System as set forth in Rule 6.2B. The DPM, LMM or Order Book Official (''OBO''), with the approval of two Floor Officials, may deviate from any rotation policy or procedure issued by the Exchange when they conclude in their judgment that such action is appropriate in the interests of a fair and orderly market.

[11] This process would not change the end-of-month fair value process, which is described in current Interpretation and Policy .06 to Rule 6.2B and which would become paragraph (a) to Interpretation and Policy .06 to Rule 6.2B under the Exchange's proposal. In addition, the rule text would provide that the Exchange may determine, on a series-by-series basis, to disseminate two-sided indicative values in non-expiring series of SPX options only. This process would not be applicable to expiring series of SPX options as those series would be settled at the final cash market closing value (*i.e.* intrinsic value at expiration).

that create a bid-ask differential that is not wider than a particular amount) prior to the close of trading. The Exchange notes that quotes and orders that meet the reasonability criteria typically exist within 15 minutes of the close of trading. In the absence of quotes and orders in the series that meet the objective reasonability criteria, two-sided indicative values would be generated using generally accepted volatility and options pricing models (*e.g.,* Black Scholes) as determined by the Exchange. The Exchange would apply the model to a set of data points (*i.e.* displayed quotations and orders) over a period of time prior to the close of trading to calculate implied volatility for all series within the data set and generate a volatility surface. Outlier data points (wide quotes or no bid series) would be removed from the calculation pursuant to a set of objective criteria. Using the derived volatility surface and ensuring that prices do not cross through closing bid/ask quotes (*i.e.,* model-generated price cannot be lower than the market's highest bid price or greater than the lowest offer price), the Exchange would back out midpoint prices for all series and then generate two-sided indicative values around those midpoints, and the created spread would vary depending on series. Two-sided indicative values would be disseminated via the Options Price Reporting Authority (''OPRA'') and CBOE Streaming Markets (''CSM''). Consistent with the last sentence of proposed Interpretation and Policy .06(b) to Rule 6.2B, which provides that two-sided indicative values would be clearly identified in an appropriate manner as determined by the Exchange, two-sided indicative values would be sent to OPRA with a specific message indicator (*i.e.* message type ''I'') that has been adopted by OPRA solely for the purpose of disseminating after-market indicative value information. Pursuant to OPRA message specifications, the new ''I'' message type would only be applicable to and active for messages sent after the close of trading of regular trading hours, which would be enforced to only allow ''I'' messages to be disseminated after 4:15 p.m. ET. The ''I'' indicator will not be disseminated for quotes generated during an extended trading hours session. The Exchange has communicated and worked with other OPRA reporting entities to ensure that within the industry, the transmission of aftermarket messages types marked ''I'' is defined within the OPRA message specifications and understood to be used to delineate informational two-sided indicative values. Pursuant to the proposed rule text, these OPRA message specifications and the ''I'' indicator would be further described and communicated to market participants via Regulatory Circular.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [14] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that generating end-of-day indicative values will serve to protect investors and the public interest by giving market participants another value to reference, if, for example, market participants believe the end-of-day indicative values are more accurate than the actual end-of-day values. The Exchange believes that the proposed procedure is a reasonable procedure permitting the Exchange to disseminate informational indicative values more reflective of actual options values in addition to final end-of-day displayed quotations when members' systems issues or market conditions result in an absence of final quotes or extraordinarily wide final quotes without interfering in the markets or impeding any market functionalities that rely on accurate pricing or end-of-day quotes. The Exchange believes that such procedures may be especially appropriate given the fact that wide or no-bid closing prices may be a reflection of prudent risk control measures, which may cause market participants to widen or pull quotations from the market prior to the close of trading in order to avoid carrying overnight positions or taking on positions while appropriate hedging instruments are unavailable. The Exchange also believes that its proposal is consistent with the Commission's recent emphasis on the need for exchanges to adopt measures to protect investors by dampening the effects of unrepresentative market volatility on market participants.[15]

Additionally, the Exchange believes that the proposed rule change, which simply proposes to make additional information regarding the indicative market value(s) of select SPX options available to market participants after the close of the markets is consistent with its trading rules and the Act. The proposed rule does not seek to modify any rules relating to or impacting the way in which options transactions are handled, represented, executed, or reported on the Exchange. Rather, the Exchange is simply proposing to make additional information available to market participants under certain circumstances in which such information may be informative or useful. This information would not be disseminated during trading hours and would be clearly marked to denote that it is informational only. The Exchange also believes that its proposal is consistent with current Rules 6.2, 6.2A, 6.2B and 24.13, which provide that the Exchange may, in the interests of a fair and orderly market, decide to employ the end-of-day indicative value process after the normal close of a trading session.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change merely seeks to describe procedures that may be employed at the Exchange. The proposed procedures will be equally applied to affect all market participants

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

[15] The Exchange also notes the Commission's emphasis on the need for exchanges to adopt measures to dampen and protect against excessive risk and market volatility. *See, e.g.,* 15 U.S.C. 240.15c3–5 (Risk Management Controls for Brokers or Dealers with Market Access); Securities Exchange Act Release No. 34–67091 (May 31, 2011), (Order Approving, on a Pilot Basis, the National Market System Plan to Address Extraordinary Market Volatility), File No. 4–631. Various exchanges have also instituted precautionary systematic controls to assist market participants in limiting exposure and ensuring against excessive risk-taking. *See, e.g.,* Nasdaq ISE, LLC Rule 804(g) (Automated Quotation Adjustments); Nasdaq Stock Market LLC Rule 6130 (NASDAQ Kill Switch); *see also* Rule 8.18 (Quote Risk Monitor Mechanism).

equally in the options market. Furthermore, when the Exchange employs the end-of-day indicative value process, market participants determine whether to utilize the indicative value.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2017–062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2017–062. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2017–062, and should be submitted on or before October 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

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BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81716; File No. SR–NYSEAMER–2017–10]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 928NY To Allow Certain Order Types To Be Excluded From the Risk Limitation Mechanism

September 25, 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 11, 2017, NYSE American LLC (the ''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 928NY (Risk Limitation Mechanism) to allow certain order types to be excluded from the risk limitation mechanism. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 928NY (Risk Limitation Mechanism) to allow certain order types to be excluded from the risk limitation mechanism. Specifically, the Exchange proposes to provide ATP Holders with the option to exclude Immediate-Or-Cancel (''IOC'') orders from being counted against risk limitation thresholds.[4]

Risk Limitation Mechanisms

The Exchange offers ATP Holders the option of utilizing risk limitation settings to assist ATP Holders in managing risk related to submitting orders during periods of increased and significant trading activity.[5] An ATP Holder can utilize one of three risk limitation mechanisms for its orders—based on the number of transactions executed, the number of contracts traded, or the percent of the ATP Holder's order size—which automatically cancels such orders when certain parameter settings are breached.[6] The Exchange maintains trade counters that increment based on the number of trades executed, either from a single-leg order or any leg of a Complex Order, in any series in a specified class.[7] The trade counters reset after an Exchange-determined time period.[8] When an ATP Holder has breached its risk settings (*i.e.,* has traded more than the contract or volume limit or cumulative percentage limit of a class during the specified measurement interval), the Exchange will cancel all of the ATP Holder's open orders in that class until the ATP Holder notifies the Exchange it will resume submitting orders.[9] The temporary suspension of orders from the market that results when the risk settings are triggered is meant to operate as a safety valve that enables ATP Holders to re-evaluate their positions before requesting to re-enter the market.

Proposed Exclusion of IOC Orders From Risk Settings

Under the current Rule, an ATP Holder may activate a Risk Limitation Mechanism, and corresponding settings, for orders in a specified class and, once activated, the mechanism and the settings established will remain active unless, and until, the ATP Holder deactivates the Risk Limitation Mechanism or changes the settings.[10] Thus, once an ATP Holder activates risk settings for orders in a specified class, the risk settings apply to all order types in that options class. The Exchange proposes to modify the rule to provide an ATP Holder that chooses to utilize risk settings for its orders the option to exclude both single-legged orders and Complex Orders designated as IOC from being considered by the trade counter. To effect this change, proposed Commentary .07 to Rule 928NY would be amended to provide that ''[a]ny ATP Holder that activates the Risk Limitation Mechanisms for orders pursuant to Commentary .04(b) of this Rule may opt to exclude any orders (*i.e.,* whether single-leg orders or Complex Orders) designated with a time-in-force of IOC from being considered by a trade counter.'' [11]

By their terms, IOC orders (or portions thereof) will cancel if not immediately executed. As such, IOC orders are never ranked (as resting interest) in the Consolidated Book. The Exchange believes that certain OTPs [sic] utilize IOC orders to access liquidity on the Exchange. Thus, the proposed change is designed to accommodate participants that utilize IOCs in this manner by enabling them to exclude IOC orders from being counted and avoid potentially triggering their risk settings (prematurely), resulting in the cancellation of open orders. The Exchange believes that providing ATP Holders this additional flexibility may encourage more ATP Holders to utilize the risk settings, which benefits all market participants. The Exchange also believes that the proposed change would result in risk settings that may be better calibrated to suit the needs of certain ATP Holders (*i.e.,* those that routinely utilize IOC orders to access liquidity on the Exchange), which improved risk settings should encourage ATP Holders to direct additional order flow and liquidity to the Exchange.

The Exchange notes that the proposed change is limited to IOC orders being counted towards whether a risk limitation threshold has been reached. In the event an ATP Holder breaches its risk limitation settings, any new orders in the specified class, including incoming IOC orders, sent by the ATP Holder would be rejected until the ATP Holder requests that the Exchange enable the entry of new orders.[12]

Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change, which implementation will be no later than 90 days after the effectiveness of this rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market by providing ATP Holders greater control and flexibility over setting their risk tolerance, which may enhance the efficacy of the risk settings. By their terms, IOC orders (or portions thereof) will cancel if not immediately executed. As such, IOC orders are never ranked (as resting interest) in the Consolidated Book. The Exchange believes that

[4] An IOC order is ''[a] Limit Order that is to be executed in whole or in part on the Exchange as soon as such order is received, and the portion not so executed is to be canceled.'' *See* Rule 900.3NY(k).

[5] *See* Commentary .04(b) to Rule 928NY (providing that ATP Holders may avail themselves of one of the three risk limitation mechanisms for certain of their orders). Under the current Rule, Market Makers are required to utilize the risk limitation settings for quotes and the Exchange is not proposing to alter any aspect of this Rule in this regard. *See also* Commentary .04(a) to Rule 928NY; and Rule 928NY(b)(2), (c)(2), (d)(2) and (e)(2).

[6] *See* 928NY(b)(1), (c)(1), (d)(1) and Commentaries .01 to Rule 928NY (regarding the cancellation of orders once the risk settings have been breached).

[7] *See* Rule 928NY(a)(1), (f). *See also* Commentaries .05–.07 to Rule 928NY (regarding the operation of the trade counters).

[8] *See* Commentary .06 to Rule 928NY.

[9] *See* Commentaries .01 and .02 to Rule 928NY (requiring that an ATP Holder request that it be re-enabled after a breach of its risk settings). In the event that an ATP Holder experiences multiple, successive triggers of its risk settings, the Exchange would cancel all of the open orders—as opposed to cancelling only those in the option class (underlying symbol) in which the risk settings were triggered. *See* Rule 928NY(f) and Commentary .02 to Rule 928NY.

[10] *See* Commentary .04(b) to Rule 928NY.

[11] *See* proposed Commentary .07 to Rule 928NY. The Exchange also proposes to correct a typographical error and make singular the reference to Complex Orders in the sentence providing that ''[e]xecutions of each leg of a Complex Orders will be considered by a trade counter as an individual transaction928NY.'' *See id.*

[12] *See* Commentary .02 to Rule 928NY.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

certain market participants utilize IOC orders to access liquidity on the Exchange. Thus, the proposed change is designed to accommodate participants that utilize IOCs in this manner by enabling them to exclude IOC orders from being counted and avoid potentially triggering their risk settings (prematurely), resulting in the cancellation of open orders. The Exchange believes that providing ATP Holders this additional flexibility may encourage more ATP Holders to utilize the risk settings, which benefits all market participants. Further, the proposed change would promote just and equitable principles of trade because it would result in risk settings that may be better calibrated to suit the needs of certain OTPs [sic] (*i.e.,* those that routinely utilize IOC orders to access liquidity on the Exchange), which improved risk settings should encourage ATP Holders to direct additional order flow and liquidity to the Exchange. To the extent additional order flow is submitted to the Exchange as a result of the proposed change, all market participants stand to benefit from increased trading.[15]

The Exchange notes that an ATP Holder has the option of utilizing risk settings for all orders submitted to the Exchange and, as proposed, would have the additional option of excluding from these risk settings any IOC orders in a given options class submitted to the Exchange.

This proposed change, which was specifically requested by some ATP Holders, would foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities as it will be available to all OTPs [sic] on an optional basis and may encourage more ATP Holders to utilize this enhanced functionality to [sic] benefit of all market participants. Because the risk controls are designed to prevent the execution of erroneously priced trades, the Exchange believes that any proposal designed to increase the number of ATP Holders that utilize the functionality would benefit all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is proposing a market enhancement that would provide ATP Holders with greater control and flexibility over setting their risk tolerance and, potentially, more protection over risk exposure. The proposal is structured to offer the same enhancement to all ATP Holders, regardless of size, and would not impose a competitive burden on any participant. The Exchange does not believe that the proposed enhancement to the existing risk limitation mechanism would impose a burden on competing options exchanges. Rather, the availability of this mechanism may foster more competition. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. When an exchange offers enhanced functionality that distinguishes it from the competition and participants find it useful, it has been the Exchange's experience that competing exchanges will move to adopt similar functionality. Thus, the Exchange believes that this type of competition amongst exchanges is beneficial to the market place [sic] as a whole as it can result in enhanced processes, functionality, and technologies.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[18] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange can implement the proposal without delay. The Exchange believes that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would enable the Exchange to implement without delay the proposed optional functionality, which the Exchange believes may, in turn, encourage more ATP Holders to utilize the optional risk settings for orders. Thus, the Exchange believes waiver of the operative delay would protect investors by enabling the Exchange to provide greater flexibility to its Risk Limitation Mechanisms for orders, which may result in increased usage of the risk settings to the benefit of all market participants. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will provide ATP Holders with the flexibility to exclude IOC orders from consideration by a trade counter, which, the Exchange believes, could encourage additional ATP Holders to use the risk limitation settings. As noted above, the risk limitation settings are designed to assist ATP Holders in managing risk related to submitting orders during periods of increased and significant trading activity. Under the proposal, the ability to exclude IOC orders from consideration by a trade counter is optional; thus, an ATP Holder that utilizes the risk limitation settings and wishes to continue to have its IOC orders considered by a trade counter will be able to do so. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

[15] The Exchange believes that the proposed correct of a typographical error in current Commentary .07 to Rule 928NY (*see supra* note 11) would add clarify [sic] and transparency to the Rule which benefits investors and the public interest.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 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.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2017–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2017–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2017–10, and should be submitted on or before October 20, 2017.

[21] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–20891 Filed 9–28–17; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before October 30, 2017.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION:

Summary of Information Collections

This information is provided by Lenders, Pool Originators and Pool Investors who participate in SBA's Secondary Market Guarantee Program for First Lien Position 504 Loan Pools. SBA uses the information primarily for loan pool monitoring, portfolio risk management, and program administration and reporting purposes.

(1) *Title:* Secondary Market for Section 504 First Mortgage Loan Pool Program.

Description of Respondents: SBA Lenders.

Form Number: 2402.

Estimated Annual Responses: 12,490.

Estimated Annual Hour Burden: 33,075.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2017–20897 Filed 9–28–17; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10143]

30-Day Notice of Proposed Information Collection: Affidavit Regarding a Change of Name

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 November 1, 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, by mail to: Alexys Stanley, U.S. Department of State, CA/PPT/S/L/LA, 44132 Mercure Cir, P.O. Box 1227, Sterling, VA 20166–1227, by phone at (202) 485–6538, or by email at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Affidavit Regarding a Change of Name.
- *OMB Control Number:* 1405–0133.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Department of State, Bureau of Consular Affairs,

Passport Services, Office of Legal Affairs (CA/PPT/S/L/LA).

- *Form Number:* DS–60.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 161,239.
- *Estimated Number of Responses:* 161,239.
- *Average Time per Response:* 40 minutes.
- *Total Estimated Burden Time:* 107,493 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain 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 Affidavit Regarding a Change of Name is submitted in conjunction with an application for a U.S. passport. It is used by Passport Services to collect information for the purpose of establishing that a passport applicant has adopted a new name without formal court proceedings or by marriage and has publicly and exclusively used the adopted name over a period of time (at least five years).

Methodology:

When needed, the Affidavit Regarding a Change of Name is completed at the time a U.S. national applies for a U.S. passport.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2017–21025 Filed 9–28–17; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 519 (Sub-No. 5)]

Renewal of National Grain Car Council

AGENCY: Surface Transportation Board.

ACTION: Notice of intent to renew charter.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), notice is hereby given that the Surface Transportation Board intends to renew the charter of the National Grain Car Council (NGCC).

ADDRESSES: A copy of the charter is available on the Board's Web site at *https://www.stb.gov/stb/rail/graincar_council.html.*

FOR FURTHER INFORMATION CONTACT: Fred Forstall, Designated Federal Officer, at (202) 245–0241. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339].

SUPPLEMENTARY INFORMATION: The NGCC functions as a continuing working group to facilitate private-sector solutions and recommendations to the STB on matters affecting grain transportation. The NGCC functions solely as an advisory body, and complies with the provisions of FACA.

The NGCC consists of approximately 40 members, excluding the governmental representatives. Members comprise a balanced representation of executives knowledgeable in the transportation of grain, including no fewer than 14 members from the Class I railroads (one marketing and one car management representative from each Class I), 7 representatives from Class II and III carriers, 14 representatives from grain shippers and receivers, and 5 representatives from private car owners and car manufacturers. The Vice Chairman of the Board is an *ex officio* (non-voting) member of the NGCC.

The NGCC meets at least annually, and meetings are open to the public, consistent with the Government in the Sunshine Act, Public Law 94–409 (1976).

Further information about the NGCC is available on the Board's Web site (*https://www.stb.gov/stb/rail/graincar_council.html*) and at the GSA's FACA Database (*https://facadatabase.gov/*).

Decided: September 19, 2017.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2017–20287 Filed 9–28–17; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2017–0021]

Meeting on Implementation of the United States-Singapore Free Trade Agreement Environment Chapter

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and meeting notice.

SUMMARY: The United States and Singapore intend to hold a meeting on implementation of Chapter 18 (Environment) of the United States-Singapore Free Trade Agreement (FTA). The Office of the United States Trade Representative (USTR) requests written comments or suggestions concerning any relevant issues.

DATES: October 2, 2017 at midnight EST: Deadline for submission of written comments. October 4, 2017 at 5:00 p.m.: The United States and Singapore will hold a public session for the meeting on FTA Environment Chapter implementation at the Envision Hub, Level 23 of the Environment Building located at 40 Scotts Road, Singapore 228231.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments in section III below. For alternatives to on-line submissions, please contact Emily Dougherty at *Emily_I_Dougherty@ustr.eop.gov* or (202) 395–6336 before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Emily Dougherty, Office of Environment and Natural Resources, at *Emily_I_Dougherty@ustr.eop.gov* or (202) 395–6336. You can find information about the United States-Singapore FTA at *https://ustr.gov/trade-agreements/free-trade-agreements/singapore-fta.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States-Singapore FTA entered into force on January 1, 2004. On October 4, 2017, the United States and Singapore will hold a public session for the meeting on FTA Environment Chapter implementation in Singapore. The purpose of the meeting is to review implementation of Chapter 18 (Environment).

USTR invites interested organizations and members of the public to attend the public session, and to submit in advance written comments or suggestions regarding implementation of

Chapter 18 and any issues that should be discussed at the meetings. If you would like to attend the public session, please notify Emily Dougherty at the email address listed below under the heading ''**ADDRESSES**.'' Please include your full name and any organization or group you represent.

II. Public Comments

USTR invites written comments or suggestions regarding implementation of Chapter 18 and any issues that should be discussed at the meetings. USTR also invites interested organizations and members of the public to attend the public session.

In preparing comments, we encourage you to refer to Chapter 18 of the FTA (*https://ustr.gov/trade-agreements/free-trade-agreements/singapore-fta/final-text*), and the Final Environmental Review of the FTA (*https://ustr.gov/sites/default/files/Singapore%20final%20review.pdf*). You can find additional information about the FTA on the USTR Web site at *https://ustr.gov/trade-agreements/free-trade-agreements/singapore-fta.*

III. Submission Instructions

If you would like to attend the public session, you must contact Emily Dougherty at *Emily_I_Dougherty@ustr.eop.gov* or (202) 395–6336 with your full name and any organization or group you represent.

All comments and suggestions must be submitted in English and sent electronically via *www.regulations.gov.* To submit comments, locate the docket (folder) by entering the docket number USTR–2017–0021 in the ''Enter Keyword or IP'' window at the regulations.gov homepage and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Comment Now!'' You should provide comments in an attached document, and name the file according to the following protocol, as appropriate: Commenter Name, or Organization, US-Singapore FTA Environment Chapter. Please include the following information in the ''Type Comment'' field: ''US-Singapore FTA Environment Chapter.'' USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the ''Type Comment'' field. For further information on using the *www.regulations.gov* Web site, please select ''How to Use *Regulations.gov*'' on the bottom of any page.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comment submitted electronically that contains business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and would not customarily be released to the public by the submitter. Additionally, the submitter should type ''Business Confidential US-Singapore FTA Environment Chapter'' in the ''Comment'' field.

Filers of comments containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character ''P''. The non-business confidential version will be placed in the docket at *www.regulations.gov* and be available for public inspection.

As noted, USTR strongly urges submitters to file comments through *www.regulations.gov.* You must make any alternative arrangements in advance of the relevant deadline and before transmitting a comment by contacting Emily Dougherty at *Emily_I_Dougherty@ustr.eop.gov* or (202) 395–6336.

We will post comments in the docket for public inspection, except business confidential information. You can view comments on the *https://www.regulations.gov* Web site by entering docket number USTR–2017–0021 in the search field on the home page.

Jennifer Prescott,

Assistant U.S. Trade Representative for Environment and Natural Resources, Office of the United States Trade Representative.

[FR Doc. 2017–20866 Filed 9–28–17; 8:45 am]

BILLING CODE 3290–F7–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Federal Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA charter renewal.

SUMMARY: The FAA is issuing this notice to advise the public of the renewal of the RTCA Charter (FAA Order 1110.77X) for 6 months, effective September 29, 2017. The Federal Aviation Administration (FAA) is authorized to establish the RTCA advisory committee in accordance with the provisions of the Federal Advisory Committee Act (FACA). The current charter agreement requires that the RTCA manage various Federal subcommittees on behalf of the agency.

The objective of the advisory committee is to seek resolution of issues and challenges involving air transportation concepts, requirements, operational capabilities, the associated use of technology, and related considerations to aeronautical operations that affect the future of the Air Traffic Management System and the integration of new technologies.

FOR FURTHER INFORMATION CONTACT: Andy Cebula at *acebula@rtca.org* or (202) 330–0652, 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: The Federal Advisory Committee meetings are open to the public and announced in the **Federal Register**, except as authorized by Section 10(d) of the Federal Advisory Committee Act.

Issued in Washington, DC, on September 26, 2017.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2017–20898 Filed 9–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on a Land Release Request at Lancaster Airport (LNS), Lancaster, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comment.

SUMMARY: The FAA is requesting public comment for a land release enabling a change in use of federally obligated airport property from aeronautical to non-aeronautical use, as well as a long-term lease of such property, at Lancaster Airport, Lititz, Pennsylvania. This change in use, which involves 2.799 acres of airport property, will accommodate the construction of a convenience store. This acreage was purchased with federal financial assistance through the Federal Aid to Airports (FAAP) Program under Grant Agreement 9–36–001–5703 in 1959. In accordance with federal regulations, this notice is required to be published in the **Federal Register** 30 days before releasing the grant assurances that requires the property to be used for an aeronautical purpose.

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

ADDRESSES: Comments on this application may be mailed or delivered to the following address: David Eberly, Manager, Lancaster Airport, 500 Airport Road, Suite G, Lititz, PA 17543–9340, 717–569–1221, and at the FAA Harrisburg Airports District Office: Lori K. Pagnanelli, Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011, (717) 730–2830.

FOR FURTHER INFORMATION CONTACT: Oscar Sanchez, Project Manager, at the Harrisburg Airports District Office location listed above.

The request for change in designation of on-airport property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the request: The Lancaster Airport Authority has submitted a land release request seeking to change the designation of 2.799 acres of on-airport property from aeronautical to non-aeronautical use. It is proposed that this acreage be leased to a developer that will use the land to construct and operate a convenience store. The proposed duration of the leasehold is 50 years. No land shall be sold as part of this land request. The property is situated on the northwest corner of the intersection of Lititz Pike (Route 501) and Airport Road in Warwick Township. The 2.799 acres are part of a 14.65-acre parcel that was purchased by the sponsor in 1959 with funding from the FAA as part of a Federal grant to protect the runway approach from incompatible development. The subject area itself, however, is located outside the designated Runway Protection Zone (RPZ) and the proposed development does not penetrate the protected surfaces established by 14 CFR part 77. The 2.799-acre area requested to be designated as non-aeronautical is impractical to be utilized for aviation purposes because it is located outside the Air Operations Area (AOA), behind a row of corporate hangars. A large stormwater drainage swale separates the site from the AOA. The subject acreage is not currently being utilized by the Airport Authority. The purpose of this request is to permanently change the designation of the property given there is no potential for future aviation use, as demonstrated by Lancaster Airport's approved Airport Layout Plan. Subsequent to the implementation of the proposed redesignation, rents received by the airport from this property must be used in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Any person may inspect the request by appointment at the FAA office address listed above. Interested persons are invited to comment. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, September 25, 2017.

Lori K. Pagnanelli,

Manager, Harrisburg Airports District Office.

[FR Doc. 2017–20969 Filed 9–28–17; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL AVIATION ADMINISTRATION

[AC 187–IL]

Schedule of Charges Outside the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) is announcing the availability of Advisory Circular (AC) 187–1L which transmits an updated schedule of charges for services of FAA Flight Standards Aviation Safety Inspectors outside the United States. The advisory circular has been updated in accordance with the procedures listed in 14 CFR part 187, Appendix A.

DATES: This AC is effective on October 1, 2017.

ADDRESSES: *How to obtain copies:* A copy of this publication may be downloaded from: *http://www.faa.gov/regulations policies/advisory circulars.*

FOR FURTHER INFORMATION CONTACT: Ms. Tish Thompkins, Flight Standards Service, AFS–50, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–0996.

John Barbagallo,

Deputy Executive Director, Flight Standards Service.

[FR Doc. 2017–20952 Filed 9–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Pipeline and Hazardous Materials Safety Administration

Notice of Public Meeting

AGENCY: Office of Hazardous Materials Safety, Federal Aviation Administration; Pipeline and Hazardous Materials Safety Administration; Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: In preparation for the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) meeting to be held October 16–October 27, 2017, in Montreal, Canada, the Federal Aviation Administration's (FAA) Office of Hazardous Materials Safety and the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Safety announce a public meeting.

DATES: The public meeting will be held on Thursday, October 12, 2017 from 9 a.m. until 12 p.m., Eastern Time.

ADDRESSES: The public meeting will be held at FAA Headquarters, 600/800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Questions regarding the meeting can be directed to Ms. Janet McLaughlin, Director, Office of Hazardous Materials Safety, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9432, Email: *9-AWA-ASH-ADG-HazMat@faa.gov.* Questions in advance of the meeting for PHMSA can be directed to Mr. Kevin Leary, International Standards Specialist, Pipeline and Hazardous Materials Safety Administration, PHH–10, 1200 New Jersey Ave. SE., Washington, DC 20590, telephone (202) 366–8553, Email: *kevin.leary@dot.gov.*

SUPPLEMENTARY INFORMATION: Participants are requested to register by using the following email address: *9-AWA-ASH-ADG-HazMat@faa.gov.* Please include your name, organization, email address, and indicate whether you

will be attending in-person or participating via conference call. The in-person meeting location specifics and conference call connection information will be provided to those who register.

We are committed to providing equal access to this meeting for all participants. If you need alternative formats or other reasonable accommodations, please call (202) 267–9432 or email *9-AWA-ASH-ADG-HazMat@faa.gov* with your request by close of business on September 28, 2017.

Information and viewpoints provided by stakeholders are requested as the United States delegation prepares for the International Civil Aviation Organization's Dangerous Goods Panel meeting to be held October 16–October 27, 2017, in Montreal, Canada. Copies of working papers, informal papers, the meeting agenda and report for this meeting will be made available by ICAO at the following Web page: *https://www.icao.int/safety/DangerousGoods/Pages/DGP26.aspx*.

Representatives from the FAA and PHMSA will be participating in the public meeting. The meeting is intended to be informal, non-adversarial, and to facilitate the public comment process. No individual will be subject to questioning by any other participant. Government representatives on the panel may ask questions to clarify statements. Unless otherwise stated, any statement made during the meetings by a member of the US delegation should not be construed as an official position of the US Government.

The meeting will be open to all persons, subject to the capacity of the meeting room and phone lines available for those participating via conference call. Every effort will be made to accommodate all persons wishing to attend. The FAA and PHMSA will try to accommodate all speakers, subject to time constraints.

Issued in Washington, DC, on September 25, 2017.

Angela H. Stubblefield,

Deputy Associate Administrator for Security and Hazardous Materials Safety, FAA.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, PHMSA.

[FR Doc. 2017–20953 Filed 9–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirty Fifth RTCA SC–213 Joint Plenary With EUROCAE WG–79

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

ACTION: Thirty Fifth RTCA SC–213 Joint Plenary with EUROCAE WG–79.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Thirty Fifth RTCA SC–213 Joint Plenary with EUROCAE WG–79. SC–213 is a subcommittee to RTCA.

DATES: October 18–19, 2017.

ADDRESSES: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Rebecca Morrison at *rmorrison@rtca.org* or 202–330–0654, 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 Thirty Fifth RTCA SC–213 joint Plenary with EUROCAE WG–79. The agenda will include the following:

October 18, 2017

1. Day 1: Plenary discussion
2. Introductions and administrative items
3. DFO statement
4. Review and approve minutes from last full plenary meeting
5. Review of terms of reference and update work product dates
6. RTCA presentation on the FRAC process
7. WG1, WG2, WG3 and WG4 status updates
8. Industry updates
9. Working group discussion

October 19, 2017

10. Discuss initiating Open Consultation/Final review and comment for: Safety and Performance Requirements (SPR) for Vision Systems for Takeoff
11. Discuss initiating Open Consultation/Final review and comment for: Minimum Aviation System Performance Standards (MASPS) for a Combined Vision Guidance System for Rotorcraft Operations
12. 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. 2017–20867 Filed 9–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2017–0168]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CONUNDRUM; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 30, 2017.

ADDRESSES: Comments should refer to docket number MARAD–2017–0168. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of

Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CONUNDRUM is:

—*Intended Commercial Use of Vessel:* Charter vessel operations

—*Geographic Region:* ''Florida, Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Delaware, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Louisiana, Texas, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota''

The complete application is given in DOT docket MARAD–2017–0168 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(*Authority:* 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

Dated: September 26, 2017.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2017–20915 Filed 9–28–17; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0040; Notice 1]

Continental Tire the Americas, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Continental Tire the Americas, LLC (CTA), has determined that certain Continental brand tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* CTA filed a noncompliance report dated March 31, 2017. CTA also petitioned NHTSA on April 27, 2017, and amended it on June 28, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

DATES: The closing date for comments on the petition is October 30, 2017.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview: Continental Tire the Americas, LLC (CTA), has determined that certain Continental brand tires do not fully comply with paragraphs S5.5(e) and S5.5(f) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles.* CTA filed a noncompliance report dated March 31, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* CTA also petitioned NHTSA on April 27, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of CTA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Tires Involved: Approximately 111,500 of the following Continental brand tires, manufactured between August 3, 2014, and March 25, 2017, are potentially involved:

- XL Continental Cross Contact UHP size 255/55R18 109Y
- Barum Brillantis 2 size 175/70R13 82T
- Continental ContiTrac size P225/70R15 100S
- XL General Grabber UHP size 275/55R20 117V
- Continental ExtremeContact DWS size 285/30ZR20 99W XL
- Continental CrossContact LX20 size 245/55R19 103S
- XL Continental CrossContact LX20 size 285/45R 114H
- General Altimax RT43 size 215/45R17 87V&

III. Noncompliance: CTA states that the noncompliance is due to a mold error, and that as a result, the number of tread plies indicated on the sidewall of the subject tires do not match the actual number of plies in the tire construction, as required by paragraphs S5.5(e) and S5.5(f) of FMVSS No. 139. Specifically, below is a list of the subject tires with the labeling as marked (Marked) and how the sidewall should have been marked (Actual):

- XL Continental Cross Contact UHP size 255/55R18 109Y

—*Marked*: ''PLIES: TREAD: 2 RAYON + 2 STEEL + 2 POLYAMIDE''

—*Actual*: ''PLIES: TREAD: 2 RAYON + 2 STEEL + 1 POLYAMIDE''

- Barum Brillantis 2 size 175/70R13 82T

—*Marked*: ''TREAD 4 PLIES: 1 POLYESTER + 2 STEEL + 1 POLYAMIDE''

—*Actual*: ''TREAD 5 PLIES: 1 POLYESTER + 2 STEEL + 2 POLYAMIDE''

- Continental ContiTrac size P225/70R15 100S

—*Marked*: ''TREAD 4 PLIES: 2 POLYESTER + 2 STEEL''

—*Actual*: ''TREAD 5 PLIES: 2 POLYESTER + 2 STEEL + 1 POLYAMIDE''

- XL General Grabber UHP size 275/55R20 117V

—*Marked*: ''PLIES: TREAD: 2 POLYESTER + 2 STEEL + 2 POLYAMIDE SIDEWALL: 2 POLYESTER''

—*Actual*: ''PLIES: TREAD: 2 RAYON + 2 STEEL + 2 POLYAMIDE SIDEWALL: 2 RAYON''

- Continental ExtremeContact DWS size 285/30ZR20 99W

—*Marked*: ''PLIES: TREAD: 1 RAYON + 2 STEEL + 2 POLYAMIDE''

—*Actual*: ''PLIES: TREAD: 2 RAYON + 2 STEEL + 1 POLYAMIDE''

- Continental CrossContact LX20 size 245/55R19 103S

—*Marked*: ''PLIES: TREAD: 1 POLYESTER + 2 STEEL + 2 POLYAMIDE''

—*Actual*: ''PLIES: TREAD: 1 POLYESTER + 2 STEEL + 1 POLYAMIDE''

- XL Continental CrossContact LX20 size 285/45R22 114H

—*Marked*: ''PLIES: TREAD: 2 POLYESTER + 2 STEEL + 2 POLYAMIDE''

—*Actual*: ''PLIES: TREAD: 1 POLYESTER + 2 STEEL + 2 POLYAMIDE''

- General Altimax RT43 size 215/45R17 87V

—*Marked*: ''PLIES: TREAD: 2 POLYESTER + 2 STEEL + 1 POLYAMIDE''

—*Actual*: ''PLIES: TREAD: 2 POLYESTER + 2 STEEL + 2 POLYAMIDE''

IV. Rule Text: Paragraphs S5.5(e) and S5.5(f) of FMVSS No. 139 require in pertinent part:

S5.5 *Tire Markings.* Except as specified in paragraph (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. . .

(e) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;

(f) The actual number of plies in the sidewall, and the actual number of plies in the tread area, if different. . .

V. Summary of CTA's Petition: CTA described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, CTA submitted the following reasoning:

(a) The tires covered by this petition are labeled with incorrect information regarding the number of tread plies and in two cases, the incorrect and/or missing ply material. However, this mislabeling has no impact on the operational performance of these tires or on the safety of vehicles on which these tires are mounted. The subject tires meet or exceed all of the performance requirements specified by FMVSS No. 139.

(b) NHTSA has concluded in response to numerous other petitions that this type of noncompliance is inconsequential to safety.

(c) Continental cited three petitions [1] that NHTSA has previously granted and noted that on several occasions NHTSA has stated:

''In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the ply material in a tire.''

(d) All tires covered by this petition meet or exceed the performance requirements of FMVSS No. 139, as well as the other labeling requirements of the standard.

(e) CTA is not aware of any crashes, injuries, customer complaints, or field reports associated with the mislabeling.

(f) CTA has quarantined all existing inventory of these tires that contain the noncompliant tire sidewall labeling.

(g) CTA has corrected the molds at the manufacturing plant, so no additional tires will be manufactured with the noncompliance.

CTA concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

To view CTA's petition analyses and test data in its entirety you can visit *https://www.regulations.gov* by following the online instructions for accessing the dockets and by using the docket ID number for this petition shown in the heading of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that CTA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after CTA notified them that the subject noncompliance existed.

[1] Cooper Tire & Rubber Company, 82 FR 17075 (April 7, 2017); Nitto Tire USA, Inc., 81FR 17764 (April 30, 2016); Hankook Tire America Corp., 79 FR 30688 (May 28, 2014); Bridgestone 78 FR 47049 (August 2, 2013).

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2017–20908 Filed 9–28–17; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Notice of Funds Availability (NOFA) Inviting Applications for the Fiscal Year (FY) 2017 Funding Round of the Bank Enterprise Award Program (BEA Program)

Announcement Type: Announcement of funding opportunity.

Funding Opportunity Number: CDFI–2017–BEA.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.021.

Key Dates:

TABLE 1—FY 2017 BEA PROGRAM FUNDING ROUND—KEY DATES FOR APPLICANTS

Description	Deadline	Time (Eastern Time—ET)	Contact Information
Grant Application Package/SF–424 Mandatory (Application for Federal Assistance).	November 16, 2017.	11:59 p.m. ET	Contact *Grants.gov* at 800–518–4726 or *support@grants.gov*.
Submission Method: Electronically via Grants.gov			
Last day to contact BEA Program Staff re: BEA Program Application materials.	November 28, 2017.	5:00 p.m. ET	CDFI Fund BEA Helpdesk: 202–653–0421 or BEA Award Management Information System (AMIS) Service Request.[1]
Last day to contact Certification, Compliance Monitoring and Evaluation (CCME) staff.	November 28, 2017.	5:00 p.m. ET	CCME Helpdesk: 202–653–0423 or Compliance and Reporting AMIS Service Request.[2]
Last day to contact IT Help Desk re. AMIS support and submission of the FY 2017 BEA Program Application in AMIS.	November 30, 2017.	5:00 p.m. ET	CDFI Fund IT Helpdesk: 202–653–0422 or IT AMIS Service Request.[3]
FY 2017 BEA Program Application	November 30, 2017.	5:00 pm ET	CDFI Fund IT Helpdesk: 202–653–0422 or IT AMIS Service Request.[4]
Submission Method: Electronically via AMIS			

[1] For questions regarding completion of the BEA Application materials, the preferred electronic method of contact with the BEA Program Office is to submit a Service Request (SR) within AMIS. For the SR, select ''BEA Application'' for the record type.

[2] For Compliance and Reporting related questions, the preferred electronic method of contact is to submit a Service Request (SR) within AMIS. For the SR, select ''General Inquiry'' for the record type, and select ''BEA-Compliance & Reporting'' for the type.

[3] For Information Technology support, the preferred method of contact is to submit a Service Request (SR) within AMIS. For the SR, select ''General Inquiry'' for the record type, and select ''BEA–AMIS technical problem'' for the type.

[4] Ibid.

Executive Summary: This NOFA is issued in connection with the fiscal year (FY) 2017 funding round of the Bank Enterprise Award Program (BEA Program). The BEA Program is administered by the U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund). Through the BEA Program, the CDFI Fund awards formula-based grants to depository institutions that are insured by the Federal Deposit Insurance Corporation (FDIC) for increasing their levels of loans, investments, Service Activities, and technical assistance within Distressed Communities, and financial assistance to certified Community Development Financial Institutions (CDFIs) through equity investments, equity-like loans, grants, stock purchases, loans, deposits, and other forms of financial and technical assistance, during a specified period.

I. Program Description

A. *History:* The CDFI Fund was established by the Riegle Community Development and Regulatory Improvement Act of 1994 to promote economic revitalization and community development through investment in and assistance to CDFIs. Since its creation in 1994, the CDFI Fund has awarded more than $2.3 billion to CDFIs, community development organizations, and financial institutions through the Community Development Financial Institutions Program (CDFI Program), the Native American CDFI Assistance Program (NACA Program), and the BEA Program. In addition, the CDFI Fund has allocated $50.5 billion in tax credit allocation authority to Community Development Entities through the New Markets Tax Credit Program (NMTC Program), guaranteed bonds in the total amount of $1.1 billion through the CDFI Bond Guarantee Program, and awarded more than $171 million through the Capital Magnet Fund. The BEA Program complements the community development activities of banks and thrifts (collectively referred to as banks for purposes of this NOFA) by providing financial incentives to expand investments in CDFIs and to increase lending, investment, and Service Activities within Distressed Communities. Providing monetary awards to banks for increasing their community development activities leverages the CDFI Fund's dollars and puts more capital to work in Distressed Communities throughout the nation.

B. *Authorizing Statutes and Regulations:* The BEA Program was authorized by the Bank Enterprise Award Act of 1991, as amended. The regulations governing the BEA Program can be found at 12 CFR part 1806 (the Interim Rule). The Interim Rule provides the evaluation criteria and other requirements of the BEA Program. Detailed BEA Program requirements are also found in the application materials associated with this NOFA (the

Application). The CDFI Fund encourages interested parties and Applicants to review the authorizing statute, Interim Rule, this NOFA, the Application, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Requirements) for a complete understanding of the Program. Capitalized terms in this NOFA are defined in the authorizing statute, the Interim Rule, this NOFA, the Application, or the Uniform Requirements. Details regarding Application content requirements are found in the Application and related materials.

Application materials can be found on *Grants.gov* and the CDFI Fund's Web site at *www.cdfifund.gov/bea.*

C. *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200):* The Uniform Administrative Requirements codify financial, administrative, procurement, and program management standards that Federal award-making agencies and Recipients must follow. When evaluating award applications, awarding agencies must evaluate the risks to the program posed by each applicant, and each applicant's merits and eligibility. These requirements are designed to ensure that applicants for Federal assistance receive a fair and consistent review prior to an award decision. This review will assess items such as the Applicant's financial stability, quality of management systems, history of performance, and audit findings. In addition, the Uniform Requirements include guidance on audit requirements and other award requirements with which Recipients must comply.

D. *Priorities:* Through the BEA Program, the CDFI Fund specifies the following priorities:

1. *Estimated Award Amounts:* The award percentage used to derive the estimated award amount for Applicants that are CDFIs is three times greater than the award percentage used to derive the estimated award amount for Applicants that are not CDFIs;

2. *Priority Factors:* Priority Factors will be assigned based on an Applicant's asset size, as described in Section V. of this NOFA (Application Review Information: Priority Factors); and

3. *Priority of Awards:* The CDFI Fund will rank Applicants in each category of Qualified Activity according to the priorities described in Section V.B. of this NOFA (Application Review Information: Award Percentages, Award Amounts, Application Review Process, Selection Process, Programmatic Financial Risk, and Application Rejection), specifically parts V.B.2: Selection Process, V.B.3: Programmatic and Financial Risk, and V.B.4: Persistent Poverty Counties.

E. *Baseline Period and Assessment Period Dates:* A BEA Program Award is based on an Applicant's increase in Qualified Activities from the Baseline Period to the Assessment Period, as reported on an individual transaction basis in the Application. For the FY 2017 funding round, the Baseline Period is calendar year 2015 (January 1, 2015 through December 31, 2015), and the Assessment Period is calendar year 2016 (January 1, 2016 through December 31, 2016).

F. *Funding Limitations:* The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA. The CDFI Fund also reserves the right to reallocate funds from the amount that is anticipated to be available through this NOFA to other CDFI Fund programs, or to reallocate remaining funds to a future BEA Program funding round, particularly if the CDFI Fund determines that the number of awards made through this NOFA is fewer than projected.

G. *Persistent Poverty Counties:* Pursuant to the Consolidated Appropriations Act, 2017 (Pub. L. Number 115–3), Congress mandated that at least ten percent of the CDFI Fund's appropriations be directed to counties that meet the criteria for ''Persistent Poverty'' designation. Persisent Poverty Counties (PPCs) are defined as any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and the most recent series of 5-year data available from the American Community Survey from the Census Bureau. The tabular BEA Program Eligibility Data which is located on the CDFI Fund's Web site has been updated and now indicates whether a census tract also meets ''Persistent Poverty County'' criteria. Applicants that apply under this NOFA will be required to indicate the minimum and maximum percentage of the BEA Program Award that the Applicant will commit to investing in PPCs.

II. Federal Award Information

A. *Funding Availability:* The CDFI Fund expects to award up to $23 million for the FY 2017 BEA Program Awards round under this NOFA. The CDFI Fund reserves the right to award in excess of said funds under this NOFA, provided that the appropriated funds are available. The CDFI Fund reserves the right to impose a minimum or maximum award amount; however, under no circumstances will an award be higher than $1 million for any Recipient.

B. *Types of Awards:* BEA Program Awards are made in the form of grants.

C. *Anticipated Start Date and Period of Performance:* The CDFI Fund anticipates the period of performance for the FY 2017 funding round will begin in the spring of calendar year 2018. Specifically, the period of performance begins on the Federal Award Date and will conclude at least one (1) full year after the Federal Award Date as further specified in the Award Agreement, during which the Recipient must meet the performance goals set forth in the Award Agreement.

D. *Eligible Activities:* Eligible Activities for the BEA Program are referred to as Qualified Activities and are defined in the Interim Rule to include CDFI Related Activities, Distressed Community Financing Activities, and Service Activities (12 CFR 1806.103).

CDFI Related Activities (12 CFR 1806.103) means CDFI Equity and CDFI Support Activities. CDFI Equity conists of Equity Investments, Equity-Like Loans, and Grants. CDFI Support Activities includes Loans, Deposits and Technical Assistance.

Distressed Community Financing Activities (12 CFR 1806.103) means Consumer Loans and Commercial Loans and Investments. Consumer Loans include Affordable Housing Loans; Education Loans; Home Improvement Loans; and Small Dollar Consumer Loans. Commercial Loans and Investments includes Affordable Housing Development Loans and related Project Investments; Commercial Real Estate Loans and related Project Investments; and Small Business Loans and related Project Investments. Service Activities (12 CFR 1806.103) include Deposit Liabilities, Financial Services, Community Services, Targeted Financial Services, and Targeted Retail Savings/Investment Products.

When calculating BEA Program Award amounts, the CDFI Fund will only consider the amount of a Qualified Activity that has been fully disbursed or, in the case of a partially disbursed Qualified Activity, will only consider the amount that an Applicant reasonably expects to disburse for a Qualified Activity within 12 months from the end of the Assessment Period. Subject to the requirements outlined in Section VI. of this NOFA, in the case of Commercial Real Estate Loans and related Project Investments, the total

principal amount of the transaction must be $10 million or less to be considered a Qualified Activity. Notwithstanding the foregoing, the CDFI Fund, in its sole discretion, may consider transactions with a total principal value of over $10 million, subject to review.

An activity funded with prior BEA Program Award dollars, or funded to satisfy requirements of an Award Agreement from a prior award, shall not constitute a Qualified Activity for the purposes of calculating or receiving an award.

E. *Distressed Community:* A Distressed Community must meet certain minimum geographic area and eligibility requirements, which are defined in the Interim Rule at 12 CFR 1806.103 and more fully described in 12 CFR 1806.401. Applicants should use the CDFI Fund's Information Mapping System (CIMS Mapping Tool) to determine whether a Baseline Period activity or Assessment Period activity is located in a qualified Distressed Community. The CIMS Mapping Tool can be accessed through AMIS or the CDFI Fund's Web site at *https://www.cdfifund.gov/Pages/mapping-system.aspx.* The CIMS Mapping Tool contains a step-by-step training manual on how to use the tool. In addition, further instructions to determine whether an activity is located in a qualified BEA Distressed Community can be located at: *https://www.cdfifund.gov/programs-training/Programs/bank_enterprise_award/Pages/apply-step.aspx#step1* when selecting the BEA Program Application CIMS3 Instructions document in the ''Application Materials'' section of the Web page. If you have any questions or problems with accessing the CIMS Mapping Tool, please contact the CDFI Fund IT Help Desk by telephone at (202) 653–0300, by IT AMIS Service Request, or by email to *AMIS@cdfi.treas.gov.*

Please note that a Distressed Community as defined by the BEA Program is not the same as an Investment Area as defined by the CDFI Program or a Low-Income Community as defined by the NMTC Program.

1. *Designation of Distressed Community by a CDFI Partner:* CDFI Partners that receive CDFI Support Activities from an Applicant must be integrally involved in a Distressed Community. CDFI Support Activities include loans, Technical Assistance, or deposits provided to a CDFI Partner. Applicants must provide evidence that each CDFI Partner that is the recipient of CDFI Support Activities is integrally involved in a Distressed Community, as noted in the Application. CDFI Partners that receive Equity Investments, Equity-Like Loans or grants are not required to demonstrate Integral Involvement. Additional information on Integral Involvement can be found in Section V. of this NOFA.

2. *Distressed Community Determination by a BEA Applicant:* Applicants applying for a BEA Program Award for performing Distressed Community Financing Activities or Service Activities must verify that addresses of both Baseline Period and Assessment Period activities are in Distressed Communities when completing their Application.

A BEA Applicant shall determine an area is a Distressed Community by:

a. Selecting a census tract where the Qualified Activity occurred that meets the minimum area and eligibility requirements; or

b. selecting the census tract where the Qualified Activity occurred, plus one or more census tracts directly contiguous to where the Qualified Activity occurred that when considered in the aggregate, meet the minimum area and eligibility requirements set forth in this section.

F. *Award Agreement:* Each Recipient under this NOFA must electronically sign an Award Agreement via AMIS prior to disbursement by the CDFI Fund of the award proceeds. The Award Agreement contains the terms and conditions of the award. For further information, see Section VI. of this NOFA.

G. *Use of Award:* It is the policy of the CDFI Fund that BEA Program Awards may not be used by Recipients to recover overhead or Indirect Costs. The Recipient may use up to fifteen percent (15%) of the total BEA Program award amount on Qualified Activities as Direct Administrative Expenses. ''Direct Administrative Expenses'' shall mean Direct Costs, as described in section 2 CFR 200.413 of the Uniform Requirements, which are incurred by the Recipient to carry out the Qualified Activities. Such costs must be able to be specifically identified with the Qualified Activities and not also recovered as Indirect Costs. ''Indirect Costs'' means costs or expenses defined in accordance with section 2 CFR 200.56 of the Uniform Requirements. In addition, the Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303, with respect to any Direct Costs.

III. Eligibility Information

A. *Eligible Applicants:* For the purposes of this NOFA, the following table sets forth the eligibility criteria to receive an award from the CDFI Fund.

TABLE 2—ELIGIBILITY REQUIREMENTS FOR APPLICANTS

Criteria	Description
Eligible Applicants	Eligible Applicants for the BEA Program must be Insured Depository Institutions, as defined in the Interim Rule. For the FY 2017 funding round, an Applicant must be FDIC-insured as of December 31, 2016 to be eligible for consideration for a BEA Program Award under this NOFA. The depository institution holding company of an Insured Depository Institution may not apply on behalf of an Insured Depository Institution. Applications received from depository institution holding companies will be disqualified.
CDFI Applicant	For the FY 2017 funding round, an eligible certified-CDFI Applicant is an Insured Depository Institution that was certified as a CDFI as of December 31, 2016 and that maintains its status as a certified CDFI at the time BEA Program Awards are announced under this NOFA. No CDFI Applicant may receive a FY 2017 BEA Program Award if it has: (1) An application pending for assistance under the FY 2017 round of the CDFI Program; (2) been awarded assistance from the CDFI Fund under the CDFI Program within the 12-month period prior to the Federal Award Date of the FY 2017 Award Agreement issued by the CDFI Program; or (3) ever received assistance under the CDFI Program for the same activities for which it is seeking a FY 2017 BEA Program Award. Please note that Applicants may apply for both a CDFI Program award and a BEA Program Award in FY 2017; however, receiving a FY 2017 CDFI Program award removes an Applicant from eligibility for a FY 2017 BEA Program Award.
	If an Applicant's CDFI certification application was submitted to the CDFI Fund as of December 31, 2016 (the last day of the assessment period), but was ultimately approved by the CDFI Fund prior to the publication of the FY 2017 NOFA, then the Applicant's CDFI status is considered ''certified'' for purposes of the FY 2017 BEA application.
Debarment/Do Not Pay Verification.	The CDFI Fund will conduct a debarment check and will not consider an Application submitted by an Applicant if the Applicant is delinquent on any Federal debt.

TABLE 2—ELIGIBILITY REQUIREMENTS FOR APPLICANTS—Continued

Criteria	Description
	The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government. The Do Not Pay Business Center provides delinquency information to the CDFI Fund to assist with the debarment check.

B. *Prior Award Recipients:* The previous success of an Applicant in any of the CDFI Fund's programs will not be considered under this NOFA. Prior BEA Program Award Recipients and prior award recipients of other CDFI Fund programs are eligible to apply under this NOFA, except as noted in the following table:

TABLE 3—ELIGIBILITY REQUIREMENTS FOR APPLICANTS WHICH ARE PRIOR RECIPIENTS

Criteria	Description
Pending resolution of noncompliance.	If an Applicant that is a prior recipient or allocatee under any CDFI Fund program: (i) Has submitted reports to the CDFI Fund that demonstrate noncompliance with a previous assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its previous agreement, the CDFI Fund will consider the Applicant's Application under this NOFA pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance.
Default status	The CDFI Fund will not consider an Application submitted by an Applicant that is a prior CDFI Fund award recipient or allocatee under any CDFI Fund program if, as of the applicable Application deadline of this NOFA, the CDFI Fund has made a final determination that such Applicant is in default of a previously executed assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee. Such entities will be ineligible to apply for an Award pursuant to this NOFA so long as the Applicant's prior award or allocation remains in default status or such other time period as specified by the CDFI Fund in writing.

C. *Contact the CDFI Fund:* Accordingly, Applicants that are prior recipients and/or allocatees under any CDFI Fund program are advised to comply with requirements specified in an assistance agreement, award agreement, allocation agreement, bond loan agreement, or agreement to guarantee. All outstanding reports and compliance questions should be directed to the Certification, Compliance Monitoring and Evaluation helpdesk by submitting a BEA Compliance and Reporting AMIS Service Request or by telephone at (202) 653–0423. The CDFI Fund will respond to Applicants' reporting, compliance, or disbursement questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting on the date of the publication of this NOFA. The CDFI Fund will not respond to Applicants' reporting, compliance, or disbursement telephone calls or email inquiries that are received after 5:00 p.m. ET on November 28, 2017, until after the Application deadline. The CDFI Fund will respond to technical issues related to AMIS Accounts through 5:00 p.m. ET on November 30, 2017, via an IT AMIS Service Request, email at *AMIS@cdfi.treas.gov,* or by telephone at (202) 653–0422.

D. *Cost sharing or matching fund requirements:* Not applicable.

IV. Application and Submission Information

A. *Address to Request an Application Package:* Application materials can be found on *Grants.gov* and the CDFI Fund's Web site at *www.cdfifund.gov/bea.* Applicants may request a paper version of any Application material by contacting the CDFI Fund Help Desk at *cdfihelp@cdfi.treas.gov.*

B. *Content and Form of Application Submission:* All Application materials must be prepared using the English language and calculations must be made in U.S. dollars. Applicants must submit all materials described in and required by the Application by the applicable deadlines. Detailed Application content requirements including instructions related to the submission of the Grant Application Package in *Grants.gov* and the FY 2017 BEA Program Application in AMIS, the CDFI Fund's web-based portal, are provided in detail in the Application Instructions. Once an Application is submitted, the Applicant will not be allowed to change any element of the Application. The CDFI Fund reserves the right to request and review other pertinent or public information that has not been specifically requested in this NOFA or the Application.

C. *Application Submission:* The CDFI Fund has a two-step submission process for BEA Applications that requires the submission of required application information on two separate deadlines and in two separate and distinct systems, *Grants.gov* and the CDFI Fund's AMIS. The first step is the submission of the Grant Application, which consists solely of the Office of Management and Budget Standard Form–424 Mandatory (SF–424 Mandatory) *Application for Federal Assistance,* in *Grants.gov*. The second step is to sumbit an FY 2017 BEA Program Application in AMIS.

D. *Grants.gov:* Applicants must be registered with *Grants.gov* to submit the Grants Application Package. The Grants Application Package consists of one item, the SF–424 Mandatory. In order to register with *Grants.gov*, Applicants must have a DUNS number and have an active registration with *SAM.gov.* The CDFI Fund strongly encourages Applicants to start the *Grants.gov* registration process as soon as possible (refer to the following link: *https://www.grants.gov/web/grants/register.html*) as it may take several weeks to complete. Applicants that have previously registered with *Grants.gov* must verify that the registration is current and active. Applicants should contact *Grants.gov* directly with questions related to the registration or submission process as the CDFI Fund does not administer or maintain this system. Applicants are required to submit a Grant Application Package in *Grants.gov* and have it validated by the *Grants.gov* submission deadline of November 16, 2017. The Grant Application Package is validated by

Grants.gov after the Applicant's initial submission and it may take *Grants.gov* up to 48 hours to complete the validation process. Therefore, the CDFI Fund encourages Applicants to submit the Grant Application Package as early as possible. This will help to ensure that the Grant Application Package is validated before the *Grants.gov* submission deadline and provide time for Applicants to contact *Grants.gov* directly to resolve any submission issues since the CDFI Fund does not administer or maintain that system. For more information about *Grants.gov*, please visit *https://www.grants.gov* and see Table 8 for *Grants.gov* contact information.

The CDFI Fund can only electronically retrieve validated Grant Application Packages from *Grants.gov* and therefore only considers the submission of the Grant Application Package to be successful when it has been validated by *Grants.gov* before the submission deadline. It is the Applicant's sole responsibility to ensure that its Grant Application Package is submitted and validated by *Grants.gov* before the submission deadline. Applicants that do not successfully submit their Grant Application Package and have it validated by the *Grants.gov* by the submission deadline will not be able to submit a FY 2017 BEA Program Application in AMIS. The CDFI Fund will electronically retrieve validated Grant Application Packages from *Grants.gov* on a daily basis. Applicants are advised that it will take up to 48 hours from when the CDFI Fund retrieves the validated Grant Application Package for it to be available in AMIS to associate with a FY 2017 BEA Program Application.

Once the CDFI Fund has retrieved the validated Grant Application Package from *Grants.gov* and made it available in AMIS, Applicants must associate it with their Application. Applicants can begin working on their FY 2017 BEA Program Application in AMIS at any time, however, they will not be able to submit the application until the validated Grant Application Package is associated, by the Applicant, with the application.

Applicants are advised that the CDFI Fund will not notify them when the validated Grant Application Package has been retrieved from *Grants.gov* or when it is available in AMIS. It is the Applicant's responsibility to ensure that the validated SF–424 Mandatory is associated with its FY 2017 BEA Application in AMIS. Applicants will not be able to submit their FY 2017 BEA Program Application without completing this step.

Applicants are advised that the lookup function in the FY 2017 BEA Application in AMIS, uses the DUNS number reported on the validated Grant Application Package to match it with the correct AMIS Organization account. Therefore, Applicants must make sure the DUNS number included in the Grant Application Package submitted in *Grants.gov* matches the DUNS number in their AMIS Organization account. If, for example, the DUNS number does not match because the Applicant inadvertently used the DUNS number of their Bank Holding Company on the Grant Application Package in *Grants.gov* and is attempting to associate with AMIS Organization account of their FDIC-Insured Bank subsidiary, the lookup function will not return any results and the Applicant will not be able to submit the FY 2017 BEA Application.

Applicants are also highly encouraged to provide EIN, Authorized Representative and/or Contact Person information on the Grant Application Package that matches the information included in AMIS Organization account.

E. *Dun & Bradstreet Universal Numbering System (DUNS):* Pursuant to the Uniform Administrative Requirements, each Applicant must provide, as part of its Application submission, a Dun and Bradstreet Universal Numbering System (DUNS) number. Applicants without a DUNS number will not be able to submit a Grant Application Package in *Grants.gov.* Applicants should allow sufficient time for Dun & Bradstreet to respond to inquiries and/or requests for DUNS numbers.

F. *System for Award Management (SAM):* An active SAM account is required to submit the required Grant Application Package in *Grants.gov.* Any entity applying for Federal grants or other forms of Federal financial assistance through *Grants.gov* must be registered in SAM in order to submit an Application. The SAM registration process can take several weeks to complete. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Applicants are required to maintain a current and active SAM account at all times during which it has an active Federal award or an Application under consideration for an award by a Federal awarding agency. The CDFI Fund will not consider any Applicant that fails to properly register or activate its SAM account and, as a result, is unable to submit its Grant Application Package in *Grants.gov*, or FY 2017 BEA Program Application in AMIS by the respective deadlines. Applicants must contact SAM directly with questions related to SAM registration or account changes as the CDFI Fund does not administer or maintain this system. For more information about SAM, please visit *https://www.sam.gov* or call 866–606–8220.

G. *AMIS:* All Applicants must complete an FY 2017 BEA Program Application in AMIS, the CDFI Fund's web-based portal. All Applicants must register User and Organization accounts in AMIS by the applicable Application deadline. Failure to register and complete a FY 2017 BEA Program Application in AMIS will result in the CDFI Fund being unable to accept the Application. As AMIS is the CDFI Fund's primary means of communication with Applicants and Recipients, institutions must make sure that they update their contact information in their AMIS accounts. In addition, the Applicant should ensure that the institution information (name, EIN, DUNS number, Authorized Representative, contact information, etc.) on the Grant Application Package submitted as part of the Grant Application Package in *Grants.gov* matches the information in AMIS. EINs and DUNS numbers in the Applicant's SAM account must match those listed in AMIS. For more information on AMIS, please see the information available through the AMIS Home page at *https://amis.cdfifund.gov.* Qualified Activity documentation and other attachments as specified in the applicable BEA Program Application must also be submitted electronically via AMIS. Detailed instructions regarding submission of Qualified Activity documentation is provided in the Application Instructions. Applicants will not be allowed to submit missing Qualified Activity documentation after the Application deadline and any Qualified Activity missing the required documentation will be disqualified. Qualified Activity documentation delivered by hard copy to the CDFI Fund's Washington, DC office address will be rejected, unless the Applicant previously requested a paper version of the Application as described in Section IV.A.

H. *Submission Dates and Times:* The following table provides the critical deadlines for the FY 2017 BEA Funding Round. Applications and any other required documents or attachments received after the applicable deadline will be rejected. The document submission deadlines stated in this NOFA and the Application are strictly enforced. The CDFI Fund will not grant

exceptions or waivers for late submissions except where the submission delay was a direct result of a Federal government administrative or technological error.

Description	Deadline	Time (Eastern Time)
Grant Application Package/SF–424 Mandatory.		
Submission Method: Electronically via Grants.gov	November 16, 2017	11:59 p.m. ET.
FY 2017 BEA Program Application.		
Submission Method: Electronically via AMIS	November 30, 2017	5:00 p.m. ET.

1. *Confirmation of Application Submission:* Applicants may verify that their Grant Application Package was successfully submitted and validated in *Grants.gov* and that their FY 2017 BEA Program Application was successfully submitted in AMIS. Applicants should note that the Grant Application Package consists solely of the SF–424 Mandatory and has a different deadline than the FY 2017 BEA Program Application. These deadlines are provided above in Table 4. FY 2017 BEA Program Funding Round Critical Deadlines for Applicants. If the Grant Application Package is not successfully submitted and subsequently validated by *Grants.gov* by the deadline, the CDFI Fund will not review the FY 2017 BEA Program Application or any of the application related material submitted in AMIS and the Application will be deemed ineligible.

a. *Grants.gov Submission Information:* Each Applicant will receive an email from *Grants.gov* immediately after the Grant Application Package is submitted confirming that the submission has entered the *Grants.gov* system. This email will contain a tracking number. Within 48 hours, the Applicant will receive a second email which will indicate if the submitted Grant Application Package was successfully validated or rejected with errors. However, Applicants should not rely on the second email notification from *Grants.gov* to confirm that the Grant Application Package was validated. Applicants are strongly encouraged to use the tracking number provided in the first email to closely monitor the status of their Grant Application Package. The Grant Application Package cannot be retrieved by the CDFI Fund until it has been validated by *Grants.gov*.

b. *AMIS Submission Information:* AMIS is the web-based portal where Applicants will directly enter their application information and add supporting documentation, when applicable. The CDFI Fund strongly encourages the Applicant to allow sufficient time to confirm the Application content, review the material submitted, and remedy any issues prior to the Application deadline. Only the Authorized Representative or an Application Point of Contact can submit the FY 2017 BEA Program Application in AMIS.

Applicants will not receive an email confirming that their FY 2017 BEA Program Application was successfully submitted in AMIS. Instead, Applicants should check their AMIS account to ensure that the status of the FY 2017 BEA Program Application shows ''Under Review.'' Step-by-step instructions for submitting an FY 2017 BEA Program Application in AMIS are provided in the Application Instructions, Supplemental Guidance, and AMIS Application Manual.

2. *Multiple Application Submissions:* If an Applicant submits multiple versions of its Grant Application Package in *Grants.gov*, the Applicant can only associate one with its FY 2017 BEA Program Application in AMIS.

Applicants can only submit one FY 2017 BEA Program Application in AMIS. Upon submission, the Application will be locked and cannot be resubmitted, edited, or modified in any way. The CDFI Fund will not unlock a submitted Application or allow multiple Application submissions.

3. *Late Submission:* The CDFI Fund will not accept an Application submitted after the Application deadline except where the submission delay was a direct result of a Federal government administrative or technological error. In such case, the Applicant must submit their request for acceptance of a late Application submission to the BEA Program Office via an AMIS Service Request with documentation that clearly demonstrates the error by no later than two business days after the applicable Application deadline for *Grants.gov* or AMIS. The CDFI Fund will not respond to request for acceptance of late Application submissions after that time period. The AMIS Service Request must be directed to the BEA Program with a subject line of ''Late Application Submission Request.''

I. *Funding Restrictions:* BEA Program Awards are limited by the following:

1. The Recipient shall use BEA Program Award funds only for the eligible activities described in Section II. D. of this NOFA and its Award Agreement.

2. The Recipient may not distribute BEA Program Award funds to an affiliate, Subsidiary, or any other entity, without the CDFI Fund's prior written approval.

3. BEA Program Award funds shall only be disbursed to the Recipient.

4. The CDFI Fund, in its sole discretion, may disburse BEA Program Award funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

J. *Other Submission Requirements:* None.

V. Application Review Information

A. *Criteria:* If the Applicant submitted a complete and eligible Application, the CDFI Fund will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFA, the Application guidance, and the Uniform Requirements. The CDFI Fund reserves the right to contact the Applicant by telephone, email, or mail for the sole purpose of clarifying or confirming Application information. If contacted, the Applicant must respond within the time period communicated by the CDFI Fund or run the risk that its Application will be rejected.

1. *CDFI Related Activities:* CDFI Related Activities include Equity Investments, Equity-Like Loans, and CDFI Support Activities provided to eligible CDFI Partners.

2. *Eligible CDFI Partner:* CDFI Partner is defined as a certified CDFI that has been provided assistance in the form of CDFI Related Activities by an unaffiliated Applicant (12 CFR 1806.103). For the purposes of this NOFA, an eligible CDFI Partner must have been certified as a CDFI as of the end of the applicable Assessment Period and be Integrally Involved in a Distressed Community.

3. *Integrally Involved:* Integrally Involved is defined at 12 CFR 1806.103.

For purposes of this NOFA, for a CDFI Partner to be deemed to be Integrally Involved, it must have: (i) Provided at least 10 percent of financial transactions or dollars transacted (*e.g.,* loans or Equity Investments), or 10 percent of Development Service Activities (as defined in 12 CFR 1805.104), in one or more Distressed Communities identified by the Applicant or the CDFI Partner, as applicable, in each of the three calendar years preceding the date of this NOFA; (ii) transacted at least 25 percent of financial transactions (*e.g.,* loans or equity investments) in one or more Distressed Communities in at least one of the three calendar years preceding the date of this NOFA; or (iii) demonstrated that it has attained at least 10 percent of market share for a particular financial product in one or more Distressed Communities (such as home mortgages originated in one or more Distressed Communities) in at least one of the three calendar years preceding the date of this NOFA.

4. *Limitations on eligible Qualified Activities provided to certain CDFI Partners:* A CDFI Applicant cannot receive credit for any financial assistance or Qualified Activities provided to a CDFI Partner that is also an FDIC-insured depository institution or depository institution holding company.

5. *Certificates of Deposit:* Section 1806.103 of the Interim Rule states that any certificate of deposit (CD) placed by an Applicant or its Subsidiary in a CDFI Partner that is a bank, thrift, or credit union must be: (i) Uninsured and committed for at least three years; or (ii) insured, committed for a term of at least three years, and provided at an interest rate that is materially below market rates, in the determination of the CDFI Fund.

a. For purposes of this NOFA, ''materially below market interest rate'' is defined as an annual percentage rate that does not exceed 100 percent of yields on Treasury securities at constant maturity as interpolated by Treasury from the daily yield curve and available on the Treasury Web site at *www.treas.gov/offices/domestic-finance/debt-management/interest-rate/yield.shtml.* For example, for a three-year CD, Applicants should use the three-year rate U.S. Government securities, Treasury Yield Curve Rate posted for that business day. The Treasury updates the Web site daily at approximately 5:30 p.m. ET. CDs placed prior to that time may use the rate posted for the previous business day. The annual percentage rate on a CD should be compounded daily, quarterly, semi-annually, or annually. If a variable interest rate is used, the CD must also have an interest rate that is materially below the market interest rate over the life of the CD, in the determination of the CDFI Fund.

b. For purposes of this NOFA, a deposit placed by an Applicant directly with a CDFI Partner that participates in a deposit network or service may be treated as eligible under this NOFA if it otherwise meets the criteria for deposits in 12 CFR.1806.103 and the CDFI Partner retains the full amount of the initial deposit or an amount equivalent to the full amount of the initial deposit through a deposit network exchange transaction.

6. *Equity Investment:* An Equity Investment means financial assistance provided by an Applicant or its Subsidiary to a CDFI, which CDFI meets such criteria as set forth in this NOFA, in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the CDFI Fund.

7. *Equity-Like Loan:* An Equity-Like Loan is a loan provided by an Applicant or its Subsidiary to a CDFI, and made on such terms that it has characteristics of an Equity Investment, as such characteristics may be specified by the CDFI Fund (12 CFR 1806.103). For purposes of this NOFA, an Equity-Like Loan must meet the following characteristics:

a. At the end of the initial term, the loan must have a definite rolling maturity date that is automatically extended on an annual basis if the CDFI borrower continues to be financially sound and carry out a community development mission;

b. Periodic payments of interest and/or principal may only be made out of the CDFI borrower's available cash flow after satisfying all other obligations;

c. Failure to pay principal or interest (except at maturity) will not automatically result in a default of the loan agreement; and

d. The loan must be subordinated to all other debt except for other Equity-Like Loans. Notwithstanding the foregoing, the CDFI Fund reserves the right to determine, in its sole discretion and on a case-by-case basis, whether an instrument meets the above-stated characteristics of an Equity-Like Loan.

8. *CDFI Support Activity:* A CDFI Support Activity is defined as assistance provided by an Applicant or its Subsidiary to a CDFI that is Integrally Involved in a Distressed Community, in the form of a loan, Technical Assistance, or deposits.

9. *CDFI Program Matching Funds:* Equity Investments, Equity-Like Loans, and CDFI Support Activities (except Technical Assistance) provided by a BEA Applicant to a CDFI and used by the CDFI for matching funds under the CDFI Program are eligible as a Qualified Activity under the CDFI Related Activity category.

10. *Commercial Loans and Investments:* Commercial Loans and Investments is a sub-category of Distressed Community Financing Activities and is defined as the following lending activity types: Affordable Housing Development Loans and related Project Investments; Commercial Real Estate Loans and related Project Investments; and Small Business Loans and related Project Investments.

11. *Consumer Loans:* Consumer Loans is a sub-category of Distressed Community Financing Activities and is defined as the following lending activity types: Affordable Housing Loans; Education Loans; Home Improvement Loans; and Small Dollar Consumer Loans.

12. *Distressed Community Financing Activities and Service Activities:* Distressed Community Financing Activities comply with consumer protection laws and are defined as (1) Consumer Loans; or (2) Commercial Loans and Investments. In addition to the requirements set forth in the Interim Rule, this NOFA provides the following additional requirements:

a. *Commercial Real Estate Loans and related Project Investments:* For purposes of this NOFA, eligible Commercial Real Estate Loans (12 CFR 1806.103) and related Project Investments are generally limited to transactions with a total principal value of $10 million or less. Notwithstanding the foregoing, the CDFI Fund, in its sole discretion, may consider transactions with a total principal value of over $10 million, subject to review. For such transactions, Applicants must provide a separate narrative, or other information, to demonstrate that the proposed project offers, or significantly enhances the quality of, a facility or service not currently provided to the Distressed Community.

b. *Small Dollar Consumer Loan:* For purposes of this NOFA, eligible Small Dollar Consumer Loans are affordable loans that serve as available alternatives to the marketplace for individuals who are Eligible Residents with a total principal value between $500 and $5,000 and have a term of ninety (90) days or more.

c. *Low- and Moderate-Income residents:* For the purposes of this

NOFA, Low-Income means borrower income that does not exceed 80 percent of the area median income, and Moderate-Income means borrower income may be 81 percent to no more than 120 percent of the area median income, according to the U.S. Census Bureau data.

13. *Reporting Certain Financial Services:* The CDFI Fund will value the administrative cost of providing certain Financial Services using the following per unit values:

a. $100.00 per account for Targeted Financial Services including safe transaction accounts, youth transaction accounts, Electronic Transfer Accounts and Individual Development Accounts;

b. $50.00 per account for checking and savings accounts that do not meet the definition of Targeted Financial Services;

c. $5.00 per check cashing transaction;

d. $50,000 per new ATM installed at a location in a Distressed Community;

e. $500,000 per new retail bank branch office opened in a Distressed Community, including school-based bank branches approved by the Applicant's Federal bank regulator;

f. In the case of Applicants engaging in Financial Services activities not described above, the CDFI Fund will determine the unit value of such services;

g. When reporting the opening of a new retail bank branch office, the Applicant must certify that such new branch is intended to remain in operation for at least the next five years;

h. Financial Service Activities must be provided by the Applicant to Eligible Residents or enterprises that are located in a Distressed Community. An Applicant may determine the number of Eligible Residents who are recipients of Financial Services by either: (i) Collecting the addresses of its Financial Services customers, or (ii) certifying that the Applicant reasonably believes that such customers are Eligible Residents or enterprises located in a Distressed Community and providing a brief analytical narrative with information describing how the Applicant made this determination. Citations must be provided for external sources. In addition, if external sources are referenced in the narrative, the Applicant must explain how it reached the conclusion that the cited references are directly related to the Eligible Residents or enterprises to whom it is claiming to have provided the Financial Services; and

i. When reporting changes in the dollar amount of deposit accounts, only calculate the net change in the total dollar amount of eligible Deposit Liabilities between the Baseline Period and the Assessment Period. Do not report each individual deposit. If the net change between the Baseline Period and Assessment Period is a negative dollar amount, then a negative dollar amount may be recorded for Deposit Liabilities only. Instructions for determining the net change is available in the Supplemental Guidance to the FY 2017 BEA Program Application.

14. *Priority Factors:* Priority Factors are the numeric values assigned to individual types of activity within: (i) The Distressed Community Financing Activities, and (ii) Services Activities categories of Qualified Activities. For the purposes of this NOFA, Priority Factors will be based on the Applicant's asset size as of the end of the Assessment Period (December 31, 2016) as reported by the Applicant in the Application. Asset size classes (*i.e.,* small institutions, intermediate-small institutions, and large institutions) will correspond to the Community Reinvestment Act (CRA) asset size classes set by the three Federal bank regulatory agencies and that were effective as of the end of the Assessment Period. The Priority Factor works by multiplying the change in a Qualified Activity by the assigned Priority Factor to achieve a ''weighted value.'' This weighted value of the change would be multiplied by the applicable Award percentage to yield the Award amount for that particular activity. For purposes of this NOFA, the CDFI Fund is establishing Priority Factors based on Applicant asset size to be applied to all activity within the Distressed Community Financing Activities and Service Activities categories only, as follows:

TABLE 5—CRA ASSET SIZE CLASSIFICATION

	Priority factor
Small institutions (assets of less than $304 million as of 12/31/2016)	5.0
Intermediate—small institutions (assets of at least $304 million but less than $1.2216 billion as of 12/31/2016)	3.0
Large institutions (assets of $1.2216 billion or greater as of 12/31/2016)	1.0

15. *Certain Limitations on Qualified Activities:*

a. *Low-Income Housing Tax Credits:* Financial assistance provided by an Applicant for which the Applicant receives benefits through Low-Income Housing Tax Credits, authorized pursuant to Section 42 of the Internal Revenue Code, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a BEA Program Award.

b. *New Markets Tax Credits:* Financial assistance provided by an Applicant for which the Applicant receives benefits as an investor in a Community Development Entity that has received an allocation of New Markets Tax Credits, authorized pursuant to Section 45D of the Internal Revenue Code, as amended (26 U.S.C. 45D), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a BEA Program Award. Leverage loans used in New Markets Tax Credit structured transactions that meet the requirements outlined in this NOFA are considered Distressed Community Financing Activities. The application materials will provide further guidance on requirements for BEA transactions which were leverage loans used in a New Markets Tax Credit structured transaction.

c. *Loan Renewals and Refinances:* Financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of calculating or receiving a BEA Program Award if such financial assistance consists of a loan to a borrower that has matured and is then renewed by the Applicant, or consists of a loan to a borrower that is retired or restructured using the proceeds of a new commitment by the Applicant. Payoff of a separate third party obligation will only be considered a Qualified Activity if the payoff of a transaction is part of the sale of property or business to an unaffiliated party to the borrower. Applicants should include a narrative statement to describe any such transactions. Otherwise the transaction will be disqualified.

d. *Certain Business Types:* Financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of financing the following business types: Adult entertainment providers, golf courses, race tracks, gambling facilities, country clubs, massage parlors, hot tub facilities, suntan facilities, or stores where the principal business is the sale of alcoholic beverages for consumption off premises.

e. *Prior BEA Program Awards:* Qualified Activities funded with prior funding round BEA Program Award dollars or funded to satisfy requirements of the BEA Program Award Agreement

shall not constitute a Qualified Activity for the purposes of calculating or receiving a BEA Program Award.

f. Prior CDFI Program Awards: No CDFI Applicant may receive a BEA Program Award for activities funded by another CDFI Fund program or Federal program.

16. *Award Percentages, Award Amounts, Application Review Process, Selection Process, Programmatic and Financial Risk, and Application Rejection:* The Interim Rule and this NOFA describe the process for selecting Applicants to receive a BEA Program Award and determining Award amounts.

a. *Award Percentages:* In the CDFI Related Activities subcategory of CDFI Equity, for all Applicants, the estimated award amount will be equal to 18 percent of the increase in Qualified Activities reported in this subcategory.

In the CDFI Related Activities subcategory of CDFI Support Activities, for a certified CDFI Applicant, the estimated award amount will be equal to 18 percent of the increase in Qualified Activities in this subcategory. If an Applicant is not a certified CDFI, the estimated award amount will be equal to 6 percent of the increase in Qualified Activities in this subcategory.

In Distressed Community Financing Activities' subcategory of Consumer Lending, the estimated award amount for certified CDFI Applicants will be 18 percent of the weighted value of the increase in Qualified Activities in this subcategory. If an Applicant is not a certified CDFI Applicant, the estimated award amount will be equal to 6 percent of the weighted value of the increase in Qualified Activities in this subcategory.

In Distressed Community Financing Activities' subcategory of Commercial Lending and Investments, for a certified CDFI Applicant, the estimated award amount will be equal to 9 percent of the weighted value of the increase in Qualified Activities in this subcategory. If an Applicant is not a certified CDFI, the estimated award amount will be equal to 3 percent of the weighted value of the increase in Qualified Activity in this subcategory.

In the Service Activities category, for a certified CDFI Applicant, the estimated award amount will be equal to 9 percent of the weighted value of the increase in Qualified Activity for the category. If an Applicant is not a certified CDFI, the estimated award amount will be equal to 3 percent of the weighted value of the increase in Qualified Activity for the category.

b. *Award Amounts:* An Applicant's estimated award amount will be calculated according to the procedure outlined in the Interim Rule (at 12 CFR 1806.403). As outlined in the Interim Rule at 12 CFR 1806.404, the CDFI Fund will determine actual Award amounts based on the availability of funds, increases in Qualified Activities from the Baseline Period to the Assessment Period, and the priority ranking of each Applicant. In calculating the increase in Qualified Activities, the CDFI Fund will determine the eligibility of each transaction for which an Applicant has applied for a BEA Program Award. In some cases, the actual award amount calculated by the CDFI Fund may not be the same as the estimated award amount requested by the Applicant.

For purposes of calculating award disbursement amounts, the CDFI Fund will treat Qualified Activities with a total principal amount less than or equal to $250,000 as fully disbursed. For all other Qualified Activities, Recipients will have 12 months from the end of the Assessment Period to make disbursements and 18 months from the end of the Assessment Period to submit to the CDFI Fund disbursement requests for the corresponding portion of their awards, after which the CDFI Fund will rescind and de-obligate any outstanding award balance and said outstanding award balance will no longer be available to the Recipient.

B. *Review and Selection Process:*

1. *Application Review Process:* All Applications will be initially evaluated by external non-Federal reviewers. Reviewers are selected based on their experience in understanding various financial transactions, reading and interpreting financial documentation, strong written communication skills, and strong mathematical skills. Reviewers must complete the CDFI Fund's conflict of interest process and be approved by the CDFI Fund.

2. *Selection Process:* If the amount of funds available during the funding round is insufficient for all estimated Award amounts, Recipients will be selected based on the process described in the Interim Rule at 12 CFR 1806.404. This process gives funding priority to Applicants that undertake activities in the following order: (i) CDFI Related Activities, (ii) Distressed Community Financing Activities, and (iii) Service Activities, as described in the Interim Rule at 12 CFR 1806.404(c).

Within each category, CDFI Applicants will be ranked first according to the ratio of the actual award amount calculated by the CDFI Fund for the category to the total assets of the Applicant, followed by Applicants that are not CDFI Applicants according to the ratio of the actual award amount calculated by the CDFI Fund for the category to the total assets of the Applicant.

Selections within each priority category will be based on the Applicants' relative rankings within each such category, subject to the availability of funds and any established maximum dollar amount of total awards that may be awarded for the Distressed Community Financing Activities category of Qualified Activities, as determined by the CDFI Fund.

The CDFI Fund, in its sole discretion: (i) May adjust the estimated award amount that an Applicant may receive; (ii) may establish a maximum amount that may be awarded to an Applicant; and (iii) reserves the right to limit the amount of an award to any Applicant if the CDFI Fund deems it appropriate.

The CDFI Fund reserves the right to contact the Applicant to confirm or clarify information. If contacted, the Applicant must respond within the CDFI Fund's time parameters or the Application may be rejected.

The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures. If those changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information regarding the changes through the CDFI Fund's Web site.

3. *Programmatic and Financial Risk:* The CDFI Fund will consider safety and soundness information from the appropriate Federal bank regulatory agency as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)). If the appropriate Federal bank regulatory agency identifies safety and soundness concerns, the CDFI Fund will assess whether the concerns cause or will cause the Applicant to be incapable of completing the activities for which funding has been requested. The CDFI Fund will not approve a BEA Program Award under any circumstances for an Applicant if the appropriate Federal bank regulatory agency indicates that the Applicant received a composite rating of ''5'' on its most recent examination, performed in accordance with the Uniform Financial Institutions Rating System.

Furthermore, the CDFI Fund will not approve a BEA Program Award for an Applicant that has:

a. A CRA assessment rating of below ''Satisfactory'' on its most recent examination;

b. a going concern opinion on its most recent audit;

c. a Prompt Corrective Action directive from its regulator that was active at the time the Applicant submitted its Application to the CDFI

Fund or becomes active during the CDFI Fund's evaluation of the Application.

Applicants and/or their appropriate Federal bank regulator agency may be contacted by the CDFI Fund to provide additional information related to Federal bank regulatory or CRA information.

The CDFI Fund will consider this information and may choose to not approve a BEA Program Award for an Applicant if the information indicates that the Applicant may be unable to responsibly manage, re-invest, and/or report on a BEA Program Award during the performance period.

4. *Persistent Poverty Counties:* Should the CDFI Fund determine, upon analysis of the initial pool of BEA Program Award Recipients, that it has not achieved the 10 percent PPC requirement mandated by Congress, Award preference will be given to Applicants that committed to deploying a minimum of 10 percent of their FY 2017 BEA Program Award in PPCs. Applicants may be required to deploy more than the minimum commitment percentage, but the percentage required should not exceed the maximum commitment percentage provided in the Application. Applicants that committed to serving PPCs and are selected to receive a FY 2017 BEA Program award, will have their PPC commitment incorporated into their Award Agreement as a Performance Goal which will be subject to compliance and reporting requirements. No applicant, however, will be disqualified from consideration for not making a PPC commitment in its BEA Program Application.

5. *Application Rejection:* The CDFI Fund reserves the right to reject an Application if information (including administrative error) comes to the CDFI Fund's attention that either: Adversely affects an Applicant's eligibility for an award; adversely affects the CDFI Fund's evaluation or scoring of an Application; or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application. There is no right to appeal the CDFI Fund's award decisions. The CDFI Fund's award decisions are final. The CDFI Fund will not discuss the specifics of an Applicant's FY 2017 BEA Program Application or provide reasons why an Applicant was not selected to receive a BEA Program Award. The CDFI Fund will only respond to general questions regarding the FY 2017 BEA Program Application and award decision process until 30 days after the award announcement date.

C. *Anticipated Announcement and Federal Award Dates:* The CDFI Fund anticipates making its FY 2017 BEA Program award announcement in the spring of 2018. The Federal Award Date shall be the date that the CDFI Fund executes the Award Agreement.

VI. Federal Award Administration Information

A. *Federal Award Notices:* The CDFI Fund will notify an Applicant of its selection as a Recipient by delivering a notification or letter. The Award Agreement will contain the general terms and conditions governing the CDFI Fund's provision of an Award. The Award Recipient will receive a copy of the Award Agreement via AMIS. The Recipient is required to sign the Award Agreement via an electronic signature in AMIS. The CDFI Fund will subsequently execute the Award Agreement. Each Recipient must also ensure that complete and accurate banking information is reflected in its SAM account at *www.sam.gov* in order to receive its award payment.

B. *Administrative and National Policy Requirements:* If, prior to entering into an Award Agreement, information (including an administrative error) comes to the CDFI Fund's attention that adversely affects: The Recipient's eligibility for an award; the CDFI Fund's evaluation of the Application; the Recipient's compliance with any requirement listed in the Uniform Requirements; or indicates fraud or mismanagement on the Recipient's part, the CDFI Fund may, in its discretion and without advance notice to the Recipient, terminate the award or take other actions as it deems appropriate.

If the Recipient's certification status as a CDFI changes, the CDFI Fund reserves the right, in its sole discretion, to re-calculate the award, and modify the Award Agreement based on the Recipient's non-CDFI status.

By executing an Award Agreement, the Recipient agrees that, if the CDFI Fund becomes aware of any information (including an administrative error) prior to the effective date of the Award Agreement that either adversely affects the Recipient's eligibility for an award, or adversely affects the CDFI Fund's evaluation of the Recipient's Application, or indicates fraud or mismanagement on the part of the Recipient, the CDFI Fund may, in its discretion and without advance notice to the Recipient, terminate the Award Agreement or take other actions as it deems appropriate.

The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient fails to return the Award Agreement, signed by the authorized representative of the Recipient, and/or provide the CDFI Fund with any other requested documentation, within the CDFI Fund's deadlines.

In addition, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Award Agreement and the award made under this NOFA for any criteria described in the following table:

TABLE 6—CRITERIA THAT MAY RESULT IN AWARD TERMINATION PRIOR TO THE EXECUTION OF AN AWARD AGREEMENT

Criteria	Description
Failure to meet reporting requirements.	If an Applicant is a prior CDFI Fund Recipient or allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guaranty, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds, until said prior Recipient or allocatee is current on the reporting requirements in the previously executed assistance, award, allocation, bond loan agreement(s), or agreement to guaranty. Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete and therefore met reporting requirements. If said prior Recipient or allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award made under this NOFA.

TABLE 6—CRITERIA THAT MAY RESULT IN AWARD TERMINATION PRIOR TO THE EXECUTION OF AN AWARD AGREEMENT—Continued

Criteria	Description
Pending resolution of noncompliance.	If, at any time prior to entering into an Award Agreement under this NOFA, an Applicant that is a prior CDFI Fund Recipient or allocatee under any CDFI Fund program: (i) Has submitted reports to the CDFI Fund that demonstrate noncompliance with a previous assistance, award, or allocation agreement, but (ii) the CDFI Fund has yet to make a final determination regarding whether or not the entity is in default of its previous assistance, award, allocation, bond loan agreement, or agreement to guarantee, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of award proceeds, pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance. If said prior Recipient or allocatee is unable to meet this requirement, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the award made under this NOFA.
Default status	If prior to entering into an Award Agreement under this NOFA: (i) The CDFI Fund has made a final determination that an Applicant that is a prior CDFI Fund Recipient or allocatee under any CDFI Fund program whose award or allocation terminated in default of such prior agreement; (ii) the CDFI Fund has provided written notification of such determination to such organization; and (iii) the anticipated date for entering into the Award Agreement under this NOFA is within a period of time specified in such notification throughout which any new award, allocation, assistance, bond loan agreement(s), or agreement to guarantee is prohibited, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Award Agreement and the award made under this NOFA.
Compliance with Federal civil rights requirements.	If prior to entering into an Award Agreement under this NOFA, the Recipient receives a final determination, made within the last three years, in any proceeding instituted against the Recipient in, by, or before any court, governmental, or administrative body or agency, declaring that the Recipient has violated the following laws: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975, (42 U.S.C. 6101–6107), and Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, the CDFI Fund will terminate and rescind the Assistance Agreement and the award made under this NOFA.
Do Not Pay	The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient is identified as ineligible to be a Recipient per the Do Not Pay database.
Safety and Soundness	If it is determined the Recipient is or will be incapable of meeting its award obligations, the CDFI Fund will deem the Recipient to be ineligible or require it to improve safety and soundness conditions prior to entering into an Award Agreement.

C. *Award Agreement:* After the CDFI Fund selects a Recipient, unless an exception detailed in this NOFA applies, the CDFI Fund and the Recipient will enter into an Award Agreement. The Award Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the approved uses of the award; (iii) the performance goals and measures; (iv) the performance periods; and (v) the reporting requirements. The Award Agreement shall provide that a Recipient shall: (i) Carry out its Qualified Activities in accordance with applicable law, the approved Application, and all other applicable requirements; (ii) not receive any disbursement of award dollars until the CDFI Fund has determined that the Recipient has fulfilled all applicable requirements; and (iii) use the BEA Program Award amount for Qualified Activities. Recipients which committed to serving PPCs will have their PPC commitment incorporated into their Award Agreement as a performance goal which will be subject to compliance and reporting requirements.

D. *Reporting:* Through this NOFA, the CDFI Fund will require each Recipient to account for and report to the CDFI Fund on the use of the award. This will require Recipients to establish administrative controls, subject to applicable OMB Circulars. The CDFI Fund will collect information from each such Recipient on its use of the award at least once following the award and more often if deemed appropriate by the CDFI Fund in its sole discretion. The CDFI Fund will provide guidance to Recipients outlining the format and content of the information required to be provided to describe how the funds were used.

The CDFI Fund may collect information from each Recipient including, but not limited to, an Annual Report with the following components:

TABLE 7—REPORTING REQUIREMENTS

Criteria	Description
Single Audit Narrative Report (or like report).	For each year of its performance period, the Recipient must answer in the Financial Report section in AMIS, as to whether it is required to have a single audit pursuant to OMB Single Audit requirements.
Use of BEA Program Award Report—for all Recipients.	Recipients must submit the Use of Award report to the CDFI Fund via AMIS.
Use of BEA Program Award Report—Funds Deployed in Persistent Poverty Counties.	The CDFI Fund will require each Recipient with Persistent Poverty County commitments to report data for Award funds deployed in persistent poverty counties and maintain proper supporting documentation and records which are subject to review by the CDFI Fund's Certification, Compliance Monitoring, and Evaluation unit.
Explanation of Noncompliance (as applicable) or successor report.	If the Recipient fails to meet a Performance Goal or reporting requirement, it must submit the Explanation of Noncompliance via AMIS.

Each Recipient is responsible for the timely and complete submission of the reporting requirements. The CDFI Fund reserves the right to contact the Recipient to request additional information and documentation. The CDFI Fund may consider financial information filed with Federal regulators during its compliance review. The CDFI Fund will use such information to monitor each Recipient's compliance with the requirements in the Award Agreement and to assess the impact of the BEA Program. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice has been provided to Recipients.

E. *Financial Management and Accounting:* The CDFI Fund will require Recipients to maintain financial management and accounting systems that comply with Federal statutes, regulations, and the terms and conditions of the award. These systems must be sufficient to permit the preparation of reports required by general and program specific terms and conditions, including the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the award. Each of the Qualified Activities categories will be ineligible for indirect costs and an associated indirect cost rate. The cost principles used by Recipients must be consistent with Federal cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the BEA Program Award. In addition, the CDFI Fund will require Recipients to: Maintain effective internal controls; comply with applicable statutes, regulations, and the Award Agreement; evaluate and monitor compliance; take action when not in compliance; and safeguard personally identifiable information.

VII. Federal Awarding Agency Contacts

A. *Questions Related to Application and Prior Recipient Reporting, Compliance and Disbursements:* The CDFI Fund will respond to questions concerning this NOFA, the Application and reporting, compliance, or disbursements between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, starting on the date that this NOFA is published through the date listed in Table 1. The CDFI Fund will post responses to frequently asked questions in a separate document on its Web site. Other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's Web site at *https://www.cdfifund.gov*.

The following table lists contact information for the CDFI Fund, *Grants.gov* and SAM:

TABLE 8—CONTACT INFORMATION

Type of question	Telephone number (not toll free)	Electronic contact method
BEA Program	202–653–0421	BEA AMIS Service Request.
Certification, Compliance Monitoring, and Evaluation.	202–653–0423	BEA Compliance and Reporting AMIS Service Request.
AMIS—IT Help Desk	202–653–0422	IT AMIS Service Request.
Grants.gov Help Desk	800–518–4726	*support@grants.gov*.
SAM.gov (Federal Service Desk)	866–606–8220	Web form via *https://www.fsd.gov/fsd-gov/login.do*.

B. *Information Technology Support:* People who have visual or mobility impairments that prevent them from using the CDFI Fund's Web site should call (202) 653–0422 for assistance (this is not a toll free number).

C. *Communication with the CDFI Fund:* The CDFI Fund will use its AMIS Internet interface to communicate with Applicants and Recipients under this NOFA. Recipients must use AMIS to submit required reports. The CDFI Fund will notify Recipients by email using the addresses maintained in each Recipient's AMIS account. Therefore, a Recipient and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in their AMIS account(s).

D. *Civil Rights and Diversity:* Any person who is eligible to receive benefits or services from CDFI Fund or Recipients under any of its programs is entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Diversity enforces various Federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of membership in a protected group, s/he may file a complaint with: Associate Chief Human Capital Officer, Office of Civil Rights, and Diversity, 1500 Pennsylvania Ave. NW., Washington, DC 20220 or (202) 622–1160 (not a toll-free number).

VIII. Other Information

A. *Reasonable Accommodations:* Requests for reasonable accommodations under section 504 of the Rehabilitation Act should be directed to Mr. Michael Jones, Community Development Financial Institutions Fund, U.S. Department of the Treasury, at *JonesM@cdfi.treas.gov* no later than 72 hours in advance of the application deadline.

B. *Paperwork Reduction Act:* Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the BEA Program funding Application has been assigned the following control number: 1559–0005.

C. *Application Information Sessions:* The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, please visit the CDFI Fund's Web site at *https://www.cdfifund.gov*.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Mary Ann Donovan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2017–20922 Filed 9–28–17; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning certain returned magazines, paperbacks, or records.

DATES: Written comments should be received on or before November 28, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

Requests for additional information or copies of the regulation should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224 or, through the Internet, at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certain Returned Magazines, Paperbacks, or Records.

OMB Number: 1545–0879. Regulation Project Number: TD 8426 (IA–195–78).

Abstract: The regulations provide rules relating to an exclusion from gross income for certain returned merchandise. The regulations provide that in addition to physical return of the merchandise, a written statement listing certain information may constitute evidence of the return. Taxpayers who receive physical evidence of the return may, in lieu of retaining physical evidence, retain documentary evidence of the return. Taxpayers in the trade or business of selling magazines, paperbacks, or records, who elect a certain method of accounting, are affected.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 19,500.

Estimated Time per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 8,125 hours.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–20874 Filed 9–28–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–C and TD 9793

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning cancellation of debt and removal of the 36-month non-payment testing period rule.

DATES: Written comments should be received on or before November 28, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *Sara.L.Covington@irs,gov.*

SUPPLEMENTARY INFORMATION:

Title: Cancellation of Debt.

OMB Number: 1545–1424.

Form Number: 1099–C.

Regulation Project Number: TD 9793.

Abstract: Form 1099–C is used by Federal government agencies, financial institutions, and credit unions to report the cancellation or forgiveness of a debt of $600 or more, as required by section 6050P of the Internal Revenue Code. The IRS uses the form to verify compliance with the reporting rules and to verify that the debtor has included the proper amount of canceled debt in income on his or her income tax return.

TD: 9793.

Abstract: These regulations under section 6050P of the Internal Revenue Code (Code), relating to the rule in § 1.6050P–1(b)(2)(iv) that the 36-month non-payment testing period is an identifiable event triggering an information reporting obligation on Form 1099–C for discharge of indebtedness by certain entities.

Current Actions: There are no major changes being made to the form or regulations. However, there are changes to the estimated number of filers (3,885,872 to 6,540,900) will result in a total burden increase of 584,106 (854,892 to 1,438,998).

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and the Federal government.

Estimated Number of Responses: 6,540,900.

Estimated Time per Response: 13 min.

Estimated Total Annual Burden Hours: 1,438,998.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number.

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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–20875 Filed 9–28–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning amortizable bond premium.

DATES: Written comments should be received on or before November 28, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to Martha R. Brinson, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Amortizable Bond Premium.

OMB Number: 1545–1491.

Regulation Project Number: T.D. 8746.

Abstract: This regulation addresses the tax treatment of bond premium. The regulation provides that a holder may make an election to amortize bond premium by offsetting interest income with bond premium, and the holder must attach a statement to their tax return providing certain information. The regulation also provides that a taxpayer may receive automatic consent to change its method of accounting for premium provided the taxpayer attaches a statement to its tax return. The information requested is necessary for the IRS to determine whether an issuer or a holder has changed its method of accounting for premium.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 7,500.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–20872 Filed 9–28–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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. The IRS is soliciting comments concerning information collection requirements related to additional first year depreciation deduction.

DATES: Written comments should be received on or before November 28, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

Requests for additional information or copies of the regulation should be directed to Sara Covington, at the Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Additional First Year Depreciation Deduction.

OMB Number: 1545–2207.

Regulation Project Number: Revenue Procedure 2011–26,

Abstract: This revenue procedure provides guidance under § 2022(a) of the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504 (September 27, 2010) (SBJA), and § 401(a) and (b) of the Tax Relief, Unemployment Insurance

Reauthorization, and Job Creation Act of 2010, Public Law 111–312, 124 Stat. 3296 (December 17, 2010) (TRUIRJCA). Sections 2022(a) of the SBJA and 401(a) of the TRUIRJCA amend § 168(k)(2) of the Internal Revenue Code by extending the placed-in-service date for property to qualify for the 50-percent additional first year depreciation deduction. Section 401(b) of the TRUIRJCA amends § 168(k) by adding § 168(k)(5), which temporarily allows a 100-percent additional first year depreciation deduction for certain new property.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; individuals or households.

Estimated Number of Respondents: 250,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 125,000.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number.

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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–20876 Filed 9–28–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 843

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 843, Claim for Refund and Request for Abatement.

DATES: Written comments should be received on or before November 28, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Claim for Refund and Request for Abatement.

OMB Number: 1545–0024.

Form Number: 843.

Abstract: Internal Revenue Code section 6402, 6404, and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Responses: 550,500.

Estimated Time per Respondent: 1 hr., 35 min.

Estimated Total Annual Burden Hours: 875,295.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–20873 Filed 9–28–17; 8:45 am]

BILLING CODE 4830–01–P

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